



**LAW AND ORDER CODE**  
**TITLE I - GENERAL PROVISIONS CODE**

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## CHAPTER 1. ESTABLISHING AUTHORITY

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#### 1.1.1 Constitutional Authority

This Law and Order Code of the Northern Cheyenne Tribe, consisting of this Title and all other Titles hereof (hereinafter “Law and Order Code” or “Code”) is adopted pursuant to the authority vested in the Northern Cheyenne Tribal Council under Article IV, Sections 1(h), (i), (k), (m), (o), (p), (q), and (n) of the Northern Cheyenne Tribe’s Constitution.

#### 1.1.2 Prior Inconsistent Ordinances and Resolutions Repealed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inconsistent with or in conflict with or contrary to the spirit and purpose of the contents of this Code are hereby repealed and have no effect.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 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 Court Clerk and online at: <https://www.cheyennation.com/judicial.html>

#### 1.1.4 Civil Rights Guarantees

A. The following civil rights are guaranteed to all persons within the exterior boundaries of the Northern Cheyenne Reservation. The Tribe 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 witnesses against him, to have compulsory process for obtaining witnesses 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 three (3) years or a fine of \$15,000, or both, subject to exceptions stated in subsections B and C below;

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.

B. The Court may subject a defendant to a fine greater than \$5,000 but not to exceed \$15,000 if the defendant is a person accused of a criminal offense who

1. has been previously convicted of the same or a comparable offense by any jurisdiction in the United States; or

2. is being prosecuted for an offense comparable to an offense that would be punishable by more than 1 year of imprisonment if prosecuted by the United States or any of the States.

C. The Court may subject a defendant to a term of imprisonment greater than one (1) year but not to exceed 3 years for any one (1) offense, if

1. The defendant is a person accused of a criminal offense who

a. Has been previously convicted of the same or a comparable offense by any jurisdiction in the United States; or

b. Is being prosecuted for an offense comparable to an offense that would be punishable by more than 1 year of imprisonment if prosecuted by the United States or any of the States.

2. If the Court imposed a total term of imprisonment of more than one (1) year on a defendant, the Court shall:

a. Provide the defendant the right to effective assistance of counsel at least equal to that guaranteed by the U.S. Constitution; and

b. At the expense of the Tribe, provide an indigent defendant the assistance of a defense attorney licensed to practice law by any

- jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys;
- c. Require that the judge presiding over the criminal proceeding has sufficient legal training to preside over criminal proceedings and is licensed to practice law by any jurisdiction in the United States;
- d. Prior to charging the defendant, make publicly available the criminal laws, rules of evidence, and rules of criminal procedure (including rules governing the recusal of judges in appropriate circumstances) of the Tribe; and
- e. Maintain a record of the criminal proceeding, including an audio or other recording of the trial proceeding.

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#### 1.2.1 Appellate Court

Shall mean the Northern Cheyenne Appellate Court, created by Title II of this Code.

#### 1.2.2 Court Day

Shall mean any and every day of the week, except Saturday and Sunday and legal Federal or Tribal holidays, provided, that whenever a legal Federal or Tribal holiday shall fall on a Monday, the Saturday preceding that Monday shall also be a Court Day if so decreed by the Chief Judge.

#### 1.2.3 Counsel and Representative

“Counsel” shall mean any person appearing, speaking, or acting for another in any criminal or civil proceeding who shall be paid for his services. This shall include Professional Attorneys who are licensed by any United States jurisdiction to practice law, and Lay Counselors or Lay Advocates, who are not licensed attorneys but are admitted to

the Northern Cheyenne Court Bar. 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.

#### **1.2.4 Code**

Shall mean the Northern Cheyenne Law and Order Code.

#### **1.2.5 Constitutional Court**

Shall mean the Northern Cheyenne Constitutional Court, created by Title II of this Code.

#### **1.2.6 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.

#### **1.2.7 Council**

Shall mean the Tribal Council of the Northern Cheyenne Reservation.

#### **1.2.8 District**

Shall mean any of the five political districts of the Northern Cheyenne Reservation.

#### **1.2.9 Enrolled Member**

Shall mean any person validly and currently listed on the official membership roll of the Northern Cheyenne Tribe of Indians.

#### **1.2.10 Jail, Juvenile Detention Facility, Detoxification Facility, 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.

#### **1.2.11 Member of Council**

Shall mean any person eligible to vote at meetings of the Tribal Council.

#### **1.2.12 Oath**

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

#### **1.2.13 Person**

Shall include, but shall not be limited to, natural persons, corporations, partnerships, trusts, unincorporated business associations and any other organization or entity involved in private or commercial activity.

#### **1.2.14 Signature, Written Instrument**

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.

#### **1.2.15 Trial Court**

Shall mean the Northern Cheyenne Trial Court, created by Title II of this Code.

## CHAPTER 3. SOVEREIGNTY

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#### 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 documents 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 Tribe.

#### 1.3.2 Sovereign Immunity

Except as may be required by federal statute or regulation or the Constitution and By-Laws of the Northern Cheyenne Tribe, or as explicitly and specifically waived by a resolution or ordinance of the Northern Cheyenne Tribal Council, the Northern Cheyenne Tribe, including all branches, divisions, departments, agencies and other governmental or proprietary instrumentalities of the Tribe (hereinafter “Tribe or its Instrumentalities”) shall be immune from suit in any civil action. In addition, the officers, Councilpersons, board members, directors, executives and other employees and agents of the Tribe or its Instrumentalities (hereinafter “Tribal Representatives”) shall be immune from suit or any liability arising from the performance of their official duties. No provision of this Law and Order Code shall be construed as waiving any such immunity unless the

provision explicitly and specifically sets forth such a waiver.

## CHAPTER 4. PRINCIPLES OF CONSTRUCTION

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#### 1.4.1 When Applied

A. The following principles of construction will apply to all of the Code unless a different construction is obviously intended:

1. Words shall be given their plain meaning and technical words shall be given their usually understood meaning where no other meaning is specified.
2. 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.
3. This Code shall be construed as a whole to give effect to all its parts in a logical, consistent manner.
4. 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.
5. 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.

B. 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.



## **LAW AND ORDER CODE**

### **TITLE II - NORTHERN CHEYENNE JUDICIAL BRANCH**

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## CHAPTER 1. GENERAL PROVISIONS

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#### 2.1.1 Courts Established

There is hereby established the Northern Cheyenne Court, constituting the Judicial Branch of Tribal government, comprised of the Trial Court, Appellate Court, Constitutional Court, and Office of the Court Clerk.

The terms “Northern Cheyenne Reservation Judicial System,” “Northern Cheyenne Reservation Court,” “Reservation Court,” “Tribal Court,” and the like, which may at times appear in other Titles of this Law and Order Code, shall be construed as being synonymous with the Northern Cheyenne Court or Judicial Branch.

The Judicial Branch is one of the three distinct branches of the Tribal Government under the Tribe’s Constitution, and thus neither the Executive Branch nor the Legislative Branch may exercise powers granted to the Judicial Branch under the Constitution and this Code, except as otherwise provided in the Tribal Constitution, this Code or Federal law.

#### 2.1.2 Northern Cheyenne Court Fees

A. Fees associated with filing matters, motions, and appeals shall be set by the Chief Judge of the Northern Cheyenne Trial Court. Such fee schedule shall be publicly posted in the Northern Cheyenne Court office.

B. Fee amounts shall be reviewed every two (2) years by the Chief Trial Judge and adjusted as necessary. Prior to adopting any changes to the fee schedule, the Court shall provide at least 60 days’ advance notice of the change to the general public and to the Tribal Council. After 60 days have passed, the Chief Judge may, in his or her discretion, adopt the changes to the fee schedule.

#### 2.1.3 Office of the Court Clerk

##### A. *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.

##### B. *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.

##### C. *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 this Title, and until a successor is appointed and takes office. Upon the death, removal, or resignation of a Court Clerk, a successor Clerk shall be appointed who shall

serve for the remainder of the former Clerk's term of office.

#### **D. Removal**

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

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#### **2.2.1 Trial Court**

The Trial Court is the trial level court of general civil and criminal jurisdiction, including without limitation jurisdiction over matters arising under the Tribe's Law & Order Code. The Trial Court exercises the full reach of the Tribe's lawful civil adjudicatory and criminal jurisdiction under applicable law, except for matters committed to the exclusive jurisdiction of the Appellate Court or Constitutional Court. This includes, so long as not inconsistent with controlling applicable Federal law,

A. civil jurisdiction over all persons, entities, property, lands, natural resources, environmental interests or values, cultural interests or values, transactions, and/or activities located within or occurring on the Northern Cheyenne Reservation or off-reservation land held in trust for the Tribe;

B. civil jurisdiction over matters arising or occurring outside the Reservation which have sufficient effect on, or sufficient minimum contacts with persons, matters or interests described in Section 2.2.1.A above

to justify the assertion of such civil jurisdiction;

C. civil jurisdiction over matters in which a party is an enrolled member of the Tribe, resides within the Reservation or on Tribal trust land outside the Reservation, or has a place of business within the Reservation or on Tribal trust land outside the Reservation;

D. civil jurisdiction over proceedings arising from, and persons and entities entering into, consensual agreements with the Tribe or Tribal members; and

E. civil and criminal jurisdiction over claims, matters and offenses as set forth in this Code, Tribal law and applicable Federal law.

#### **2.2.2 Appellate Court**

The Appellate Court has exclusive jurisdiction to hear appeals and other authorized requests for appellate review of Trial Court decisions.

#### **2.2.3 Constitutional Court**

The Constitutional Court shall have exclusive jurisdiction to review and declare unlawful legislative actions of the Tribal Council and any claim explicitly authorized by the Tribal Council under this Code or duly enacted Tribal law, resolution or ordinance.

#### **2.2.4 Subject Matter Jurisdiction**

Applying appropriate choice of law and jurisdictional rules, the Trial and Appellate Courts shall hear civil and criminal matters within their jurisdiction as set forth in this Chapter, including matters arising under:

A. The Tribal Constitution;

- B. A referendum under Article VIII of the Tribal Constitution;
- C. Tribal codes, ordinances and resolutions;
- D. Tribal decisional law;
- E. 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;
- F. The Indian Civil Rights Act, the Indian Child Welfare Act or other applicable Federal law; or
- G. Principles of state or federal common law used by the Tribal Court to guide its fashioning of decisional principles under Tribal law when such principles are not currently found in applicable existing provisions of Tribal law; provided that absent federal law to the contrary or lawful consent of the Tribal Council, state law shall not govern or apply to persons, matters or interests of the Tribe or within the Reservation or located on Tribal trust lands.

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#### 2.3.1 Trial Court Judges

The Trial Court shall have at least two full-time Trial Judges, including a Chief Trial

Judge and one or more Associate Trial Judge(s). Each Trial Court 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.

#### 2.3.2 Term of Office

There shall be a four (4) year Term of Office applicable to all Judges. Each Judge shall serve their term of office and the period thereafter until his or her successor has been duly sworn in.

#### 2.3.3 Election of Trial Court Judges

All Trial Court 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.

If the office of Trial Judge becomes vacant due to death, resignation, removal, or other cause, there shall be an at-large primary 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 are less than 180 days remaining in the Term of Office, the Tribal Council may choose not to hold the election, whereupon the Tribal Council shall appoint a qualified person to the office.

#### 2.3.4 Trial Court Judge Qualifications

Trial Court Judges must meet the following qualification criteria:

- A. *Age*. Must be at least thirty (30) years of age.
- B. *Tribal Membership*. Must be an enrolled member of the Tribe.

C. *Domicile*. Must be domiciled on the Reservation throughout the Term of Office.

D. *Education*. Must be a high school graduate or hold a G.E.D. certificate or its equivalent.

E. *No Felony Conviction*. Must have never 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 since been vacated.

F. *No Serious Misdemeanor Conviction Within 10 Years*. Must have not 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 within the ten (10) year period preceding the date set for the primary election or the date of appointment to office, and at all times thereafter through the end of the Term of Office. The foregoing shall not include convictions which have since been vacated.

G. *No Removal Within Three Years*. Must not have been removed as a judge on a Complaint for Removal within the three (3) year period preceding (A) the date set for the primary election (and through the date of the general election) or (B) the date of appointment to office, as the case may be.

H. *Not a Party to Tribal Court Proceedings*. Must not be a plaintiff or defendant in pending civil or criminal litigation in the Northern Cheyenne Courts at the time of filing for election to office or of appointment to office.

I. *Legal Knowledge*. 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.

J. *Legal Skills*. Must have the ability and competence to:

1. Conduct efficient and organized legal proceedings;
2. Research and apply applicable law;
3. Timely decide or otherwise resolve disputes; and
4. Set forth clear and reasoned decisions and orders in writing.

K. *Deal With Conflict*. Must be able to deal effectively with people in highly emotional, adversarial, and/or confrontational situations.

L. *Familiarity with Cheyenne Language*. Familiarity with the Cheyenne language is desirable but not mandatory.

### **2.3.5 Certification of Qualifications**

Before a candidate for the position of Trial Judge is placed on a primary or general election ballot, or appointed under this Title, the Tribal President must assure that the qualifications of the candidate for appointment have been carefully investigated, and certify in writing that such an investigation has been performed and that the candidate possesses the requisite qualifications set forth in Section 2.3.4.

### **2.3.6 Compensation**

The compensation for Trial Judges shall be set by the Tribal Council.

Except for cases where the Tribal Council, acting under Section 2.10.1 herein, converts a full-time Judgeship to a part-time Judgeship, the compensation of a Trial 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.

### **2.3.7 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 concurrence of the Tribal Council, in their absolute discretion, may at any time designate another Trial Judge as the Chief Trial Judge.

### **2.3.8 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 as provided in Section 2.10.2, manage the Trial Court calendar, supervise the Court Clerk and other duties assigned by this Code or Tribal law.

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### **2.4.1 Composition of the Appeals Court**

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

### **2.4.2 Term of Office**

There shall be a four-year Term of Office for all Judges, ending with the first Regular Presidential election occurring after appointment.

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.

### **2.4.3 Selection of Appellate Court Judges**

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

B. *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 2.4.2.

C. *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.

### **2.4.4 Appellate Judge Qualifications**

A. Appellate Court Judges must meet the following qualifications:

1. *Age.* All Appellate Judges must be at least 30 years old.

2. *Tribal Membership.* At least one Appellate Judge must be an enrolled member of the Tribe.

3. *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.

4. *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.

5. *No Serious Misdemeanor Conviction Within 10 Years.* Within the 10 year period preceding the date of appointment to office 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.

6. *No Removal Within Three Years.* Within the three-year period preceding the date of appointment to office, a Judge must not have been removed as a Judge on a Complaint

for Removal under Chapter 8 of this Title.

7. *Domicile.* At least one Appellate Judge must be domiciled within 150 miles of Lame Deer, Montana throughout their Term of Office.

8. *Not a Party to Tribal Court Proceedings.* At the time of filing of appointment to office, a Judge must not be a plaintiff or defendant in any civil or criminal action pending in the Northern Cheyenne Court.

9. *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.

10. *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.

11. *Deal with Conflict.* All Judges must be able to deal effectively with people in highly emotional, adversarial, and confrontational situations.

12. *Familiarity with Cheyenne Language.* It is desirable, but not mandatory, that all Judges have some familiarity with the Cheyenne language.

B. *Certification of Qualifications.* Before a person is appointed to the position of Appellate Judge, the Tribal President must assure that the qualifications of the candidate for appointment have been carefully investigated, and certify in writing that such an investigation has been performed and that the candidate possesses the requisite qualifications set forth in this Section 2.4.4.

#### **2.4.5 Compensation**

The compensation for Appellate Judges shall be set by the Tribal Council.

Except for cases where the Tribal Council, acting under section 2.10.1, 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.

#### **2.4.6 Conflict of Interest**

No Appellate Judge shall hear or decide an appeal if that Judge:

1. Decided any material matter in the Trial Court proceedings;
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 from any particular disposition of the appeal; 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 appeal.

A party to an appeal may, in accordance with the above provisions, file an affidavit of prejudice with the Appellate Court stating facts and reasons for the belief that prejudice exists. The affidavit must be filed within five (5) days of the designation of the Appellate Judge to hear the appeal.

If two other Appellate Judges agree prejudice in accordance with the above provisions exists, another Judge will be appointed to hear the case.

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

#### **2.4.7 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.

#### **2.4.7 Administrative Responsibilities**

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 this Chapter, and manage the calendars of the Appellate Court and the Constitutional Court.

#### **2.4.8 Court Sessions**

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

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#### **2.5.1 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 as set forth in Title V, Rule 39 of this Code.

#### **2.5.2 How to Request an Appeal**

An appeal is commenced in a civil case by filing an original and one (1) copy of a Request for Appeal with the Court Clerk within thirty (30) days of the date of the Trial Court's adverse decision. In a civil case, the party requesting appeal must also file two (2) copies of his brief and a copy of the trial transcript with the Court Clerk within twenty (20) days of requesting an appeal. In criminal cases an appeal must be requested within seven (7) calendar days of the decision and briefs are due within seven (7) calendar days.

#### **2.5.3 Clerk's Duties**

When a Request for Appeal is received, the Court Clerk will notify the Chief Appellate Judge and opposing parties within three (3) days of the Request. After the brief and transcript are received, the Clerk will distribute the transcript and one copy of the brief to the Chief Appellate Judge and the other brief to the opposing party within two (2) days. The opposing party's brief, when received, will also be distributed in two (2) days.

#### **2.5.4 Opposing Party's Response**

In a civil case, the opposing party will have ten (10) days from the date the appealing party brief is received to file an opposing brief and any Request for Cross-Appeal supported by the opposing brief. In a criminal case the opposing brief and any Request for Cross-Appeal must be filed within seven (7) days of receiving the appealing party's brief. A party shall have seven (7) days from receipt of a Request for Cross-Appeal to file a responsive brief.



### **2.5.5 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 file his brief within the stated time limits, the case will be decided without that brief.

### **2.5.6 Filing Fee**

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

### **2.5.7 Costs**

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

### **2.5.8 Satisfaction of Judgment**

All judgments and orders of the Appellate Court shall be enforceable through and by the Trial Court. Upon compliance with and satisfaction of the judgment or order, the Court Clerk shall notify the Chief Appellate Court Judge.

### **2.5.9 Extension of Time Limits**

The Appellate Court, for good cause, may extend any time limit set in this Chapter.

### **2.5.10 Election Contest Appeals**

A. Appeals of the decision of the Trial Court in an Election Contest, as defined in Section 22 of the Tribe's Revised Election Ordinance, shall proceed according to this Code; however where provision of this Code conflict with Section 22 of the Election Ordinance, the Election Ordinance shall govern.

B. Election Contest appeals shall take precedence over all other matters before the Appellate Court and judgment shall be entered as promptly as possible

### **2.5.11 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. FULL APPEALS**

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### **2.6.1 Who Hears the Appeal**

All appeals and other authorized requests for review before the Appellate Court shall be heard and decided by one Appellate Judge. A full appeal is heard by a single Appellate Judge, provided that subsequent *en banc* review by a panel of three (3) Appellate Judges may be sought.

*En banc* review of the decision of a single Appellate Judge may be sought and shall be granted if two (2) 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 thirty (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 ten (10) days of its receipt of the request. The Court Clerk shall ensure that copies of all requests for *en banc* review and

all responses thereto are promptly distributed to each Appellate Judge.

### **2.6.2 What May Be Appealed**

Any final decision of the Trial Court may be appealed unless the right of appeal is foreclosed by this Law and Order Code or other applicable Tribal or federal law.

### **2.6.3 Standards on Full Appeal**

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

When an appeal is heard, the Appellate Court may affirm, modify, reverse, or remand the Trial 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.

### **2.6.4 When Oral Arguments Heard**

In a civil or criminal case, oral argument shall be held only if ordered by the Appellate Court.

### **2.6.5 No Majority on the Decision**

In *en banc* reviews, if no majority is reached on a decision, then the decision rendered by the single Appellate Judge shall stand.

### **2.6.6 Written Decision**

The Appellate 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.

### **2.6.7 Time Limits**

The written decision in a civil or criminal case shall be issued within fifteen (15) days of the later of: the date the last brief is due or the date of oral argument.

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### **2.7.1 Who Hears Immediate Appeals**

An immediate appeal is heard by a single Appellate Judge, provided that subsequent *en banc* review by a panel of three Appellate Judges may be sought and granted.

*En banc* review of the decision of a single Appellate Judge may be sought and shall be granted if two (2) 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 thirty (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 ten (10) days of its receipt of the request. The Court Clerk shall ensure that copies of all requests for *en banc* review and all responses thereto are promptly distributed to each Appellate Judge.

### **2.7.2 What May be Immediately Appealed**

A party may request an immediate appeal in the following circumstances, unless the right to immediate appeal is foreclosed by this Law and Order Code or other applicable Tribal or federal law:

A. Injunctions: Trial Court order prohibiting or allowing a particular action.

B. Mandamus: Trial Court order directing the Tribe or its Instrumentalities or a Tribal Representative, as these terms are defined in section 1.3.2, to perform or refrain from performing a particular act as part of its or his official duties or to restore to a party rights and privileges of which has been illegally deprived; provided the foregoing shall not be construed as a waiver of sovereign immunity under section 1.3.2.

C. Interlocutory: Trial Court order deciding some point before the end of a case that is not a final decision in the case.

D. Habeas corpus: Trial Court order to produce a detained person, justify the detention, and provide any related relief.

### **2.7.3 Time Limits**

The request for an immediate appeal must be made in writing in the Request for Appeal. Within three (3) days of such filing, the Appellate Judge will decide in writing whether the appeal will be processed as an immediate appeal, dismissed or processed as a full appeal. If processed as an immediate appeal, a written decision on the appeal shall be issued as soon as possible, but no later than ten (10) days after the Request for Appeal is filed.

### **2.7.4 Standards on Immediate Appeal**

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

### **2.7.5 Notice of Immediate Appeal**

The appealing party must notify the opposing parties of the request for an immediate appeal at or prior to the time the Request for Appeal

is filed with the Court Clerk or the appeal will not be processed as an immediate appeal.

### **2.7.6 Submission of Information by Parties**

When the appeal is processed as an immediate appeal, all parties shall submit their reasons for having the order reversed or affirmed or modified, in writing and/or orally at a hearing as the Appellate Court requests. Information not submitted by the parties will not be considered by the Appellate Court in reaching a decision.

### **2.7.7 Written Decision**

The Appellate Court'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.

### **2.7.8 Full Appeal Not Precluded**

The processing and disposition of an immediate appeal does not preclude a full appeal of the Trial Court's final decision in the case.

## **CHAPTER 8. REMOVAL OF JUDGES**

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### **2.8.1 Automatic Removal**

A Judge shall forfeit and be removed from office ("Automatic Removal") on the following grounds:

A. *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.

B. *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.

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

## **2.8.2 Removal by Complaint**

Removal by Complaint may be sought and effected on the grounds that the Judge:

A. has grossly or repeatedly failed to competently perform the duties of office;

B. 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 2.8.1.A or B, the convicted Judge shall be Automatically Removed in the manner described in section 2.8.1;

C. 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

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

## **2.8.3 Procedures for Automatic Removal**

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

A. Upon receiving advice, it deems reliable that indicates that a Judge ("Respondent") stands convicted of a felony or a Misdemeanor Involving Moral Turpitude, or lacks any qualification for office, 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 are pending.

B. 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 Title. The hearing shall be held as promptly as possible but no sooner than ten (10) days from the date of issuance of the written notice.

C. 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.

D. 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, Misdemeanor Involving Moral Turpitude, or lacks any requisite qualification for office. If the Court decides that such ground for Automatic Removal in fact exists, it shall be dutybound to immediately confirm Respondent's Automatic Removal from office, effective immediately. The Constitutional Court's decision shall be in writing.

E. 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.

F. While Automatic Removal proceedings are pending, the Constitutional

Court may suspend or otherwise limit Respondent's status or authority as a Judge.

G. An Automatic Removal based on a conviction described in section 2.8.1.A or B, which is confirmed by the Constitutional Court as provided in this Section 2.8.3, shall not be suspended or reversed because of a subsequent decision rendered in any judicial proceeding to vacate the conviction. However, if the conviction is vacated it will not disqualify Respondent from later qualifying for election or appointment to a Judgeship as provided in this Title.

#### **2.8.4 Proceedings for Removal by Complaint**

Removal of a Judge 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 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.

A. *Withdrawal of Complaint.* At any time prior to the commencement of a hearing under subsection E 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 all signature withdrawal(s) to the Respondent, any other Complainant(s), each member of the Constitutional Court, the Tribal President, and the Tribal Secretary

B. *Review by Tribal Secretary.* Within seven (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.

C. *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:

1. if it meets the formal and procedural requirements of this Ordinance; and
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 in subsections C.1 and C.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 in subsection C.1 or C.2, the Complaint shall thereupon be deemed dismissed and no further action shall be taken on it. If the Court reports positively on items in subsection C.1 and C.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.

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

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

1. At least ten (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 Title.
2. 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.

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

F. *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.

### **2.8.5 Exclusive Methods of Judge Removal**

The foregoing proceedings in this Chapter shall be the exclusive proceedings and standards for removal of any Judge.

## **CHAPTER 9. CONSTITUTIONAL COURT**

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### **2.9.1 Composition of the Constitutional Court**

The Constitutional Court shall consist of three (3) 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.

### **2.9.2 Exclusive and Original Jurisdiction Over Constitutional Claims**

The Constitutional Court shall have original jurisdiction over, and be the exclusive Tribal juridical 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 ("Council Enactment") is in whole or in part invalid because it violates:

- A. The Tribal Constitution and Bylaws;
- B. A referendum adopted under Article VIII of the Tribal Constitution;
- C. A Tribal resolution, ordinance or code; or
- D. 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 subsections A-D above.

### **2.9.3 Relief**

Unless authorized to grant other relief, the Constitutional Court shall have authority to issue only one (1) 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.

### **2.9.4 Procedures and Rules**

A. The Tribal Council, as an entity, shall be made a party-defendant in any Constitutional Court proceedings on a Constitutional Claim, pursuant to the waiver of sovereign immunity in section 2.9.8.

B. Except to the extent inconsistent with this Chapter, Constitutional Claims and Other Claims (other than appeals) 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 to cover matters not addressed by the foregoing provisions of this section.

### **2.9.5 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 as assessed under recognized legal principles as determined by the Constitutional Court.

### **2.9.6 Principles of Judicial Restraint**

In adjudicating Constitutional Claims, the Constitutional Court shall observe all established doctrines of judicial restraint, including without limitation the following:

A. Requiring exhaustion of available remedies within the Executive Branch and/or Legislative Branch;

B. Presuming that the Council Enactment is valid and requiring that its invalidity be clearly and convincingly known;

C. Deferring to the Tribal Council’s judgment on policy matters and political questions;

D. Deferring to determinations of administrative agencies within the Executive Branch in matters within their particular expertise;

E. Avoiding Constitutional issues;

F. Deciding on non-Constitutional grounds;

G. Abstaining from hypothetical or moot questions; and

H. Upholding all valid and severable portions of the enactment or other action of the Tribal Council under challenge.



### **2.9.7 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, 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 the 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. 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.

### **2.9.8 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 Title. The

sovereign immunity of the Tribe, any Tribal Entity, or any Tribal Representative is not otherwise waived in any respect.

### **2.9.9 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:

- A. 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”);
- B. Provide relief other or in addition to a Declaratory Judgment on a Constitutional Claim or Other Claim (“Other Relief”); and/or
- C. 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.

### **2.9.10 Removals**

- A. The Constitutional Court shall confirm the Automatic Removal of a Judge as provided for in Chapter 8 of this Title and shall hear and decide any Complaint for Removal of a Judge under Chapter 8 of this Title.
- B. If the removal is directed at an Appellate Judge as 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.

### 2.9.11 Decisions Binding

All Declaratory Judgments of the Constitutional Court on matters within its jurisdictions:

A. 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; and

B. May not be modified, vacated or reversed by the Tribal Council or the Executive Branch.

### 2.9.12 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 10. ADDITIONAL JUDGES

### SECTIONS

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#### 2.10.1 Adjustment of Judgeships

A. *Retained Power to Add Judges or Adjust Their Work Schedules.* In light of the

needs of the Northern Cheyenne Courts and available Tribal financial resources, the Tribal Council may at any time temporarily or permanently:

1. Increase the number of Judges specified in this Title for any Court; and

2. Convert any Judgeship specified as a part-time position in this Title to a full-time position, or vice versa.

Judges added under this Section are referred to in this Chapter as “Added Judges,” “Added Tribal Judges,” or “Added Appellate Judges,” as the case may be.

B. *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 3. 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.

C. *Added Appellate Judges.* All added Appellate Judges shall be appointed by the Tribal President with concurrence of the Tribal Council.

D. *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 2.3.2 during which the Added Judge was elected or appointed, plus the additional period described in Sections 2.3.2 (Trial Judges) or 2.4.2 (Appellate Judges).

## 2.10.2 Judges Pro Tem

### A. *Appointment and Removal.*

1. 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.

2. 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.

### B. *Qualifications.*

1. To serve as a Judge Pro Tem in a particular Court, one must possess the qualifications set forth in this Title 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 Northern Cheyenne Courts.

2. Before a person is appointed to the panel of Judges Pro Tem, the Tribal President must assure that the qualifications of the candidate for appointment have been carefully investigated, and certify in writing

that such an investigation has been performed and that the candidate possesses the requisite qualifications set forth in Section 2.4.4.

C. *Assignment.* For the temporary purpose described in Section 2.10.2.A 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 8 of this Title directed at an Appellate Judge, only the Chief Trial Judge may assign a Judge Pro Tem to the Constitutional Court as provided in Section 2.8.5.

D. *Pro Tem Assignment of Sitting Judges.* If assignment of a Judge Pro Tem is not feasible, for the temporary purpose described in Section 2.10.2.A above, the Chief Trial Judge and Chief Appellate Judge may jointly designate any Trial Judge to serve pro tem in the Appellate Court or in the Constitutional Court, or any Appellate Judge to serve in the Trial Court, provided the designee possess the qualifications for Judge of the Court to which he or she has been assigned as set forth in this Title 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 8 of this Title, only the Chief Trial Judge may assign a Trial Judge to the Constitutional Court as provided in Section 2.8.5.

E. The Chief Trial Judge and Clerk of Court, in coordination with the Tribal Secretary, shall be responsible for keeping current the list of Judges Pro Tem and their assignments, and for communicating with Judges Pro Tem regarding their service to the Tribe.

## CHAPTER 11 REPORTING, TRAINING AND FUNDING

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#### 2.11.1 Audits and Reports

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:

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

B. *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.

#### 2.11.2 Training

Subject to availability of funds, there shall be mandatory training for all Judges, as directed by the Chief Trial Judge for Trial Judges and by the Chief Appellate Judge for Appellate Judges.

Each Judge will receive training at least annually.

The training must cover subjects relevant to the Judge's functions, including without limitation pre-trial, trial, or appellate procedures, discovery, legal research, legal writing, Tribal law, and federal Indian law.

The training shall be conducted by authorities within their respective fields.

#### 2.11.3 Funding

A. 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.

B. With 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 before 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.

C. 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 accountability.

#### 2.11.4 Care of Bonds, Fines and Fees

A. All monies collected for fines imposed for the commission of offenses against ordinances passed by the Tribal Council or imposed under this Code shall be in the nature of an assessment in support of the Judicial Branch. Such expenses include but are not limited to the payment of fees provided for in this Code or Tribal ordinances, to jurors and to witnesses answering subpoenas, to counselors and Court officials, and other expenses of the Judicial Branch.

B. The fines assessed shall be deposited by the Court Clerk with the Tribal Treasurer and shall, by said Treasurer, be deposited in the appropriate account of the Tribe. The Tribal Treasurer shall draw checks from such funds in accordance with the existing budget.

C. The Tribal Treasurer and Court Clerk shall keep an accounting of all such deposits and withdrawals.

## **CHAPTER 12 BAR ADMISSION**

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#### **2.12.1 General**

A. Lay counselors and licensed professional attorneys (collectively, “counsel”), 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 professional capacity.

B. Any person appearing as counsel shall be subject to the same ethical obligations of honesty and confidentiality towards their client and the counselor/ attorney-client testimonial privileges shall apply in appropriate circumstances.

C. The Northern Cheyenne Tribe shall have no obligation to provide or pay for such counsel, and such obligation shall rest

entirely with the person desiring such a counselor or attorney.

#### **2.12.2 Right to Be Represented by Counsel**

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

B. The Court and Tribe reserve the right to develop a public defender program which would provide counsel to indigent defendants accused of crimes at the Tribe’s expense, and to develop rules regarding the availability of such defenders.

#### **2.12.3 Eligibility for Admission**

A. Any person admitted to practice must

1. be of good moral character;
2. be approved by the Northern Cheyenne Court Bar;
3. in writing, sign and take the oath;
4. pay the Northern Cheyenne Court Bar fee;
5. be at least twenty-one years of age;
6. carry and display upon request verification of the admission to the Northern Cheyenne Court Bar;

7. must not have been convicted of a felony or misdemeanor within one year prior to the date of admission to the Northern Cheyenne Court Bar; and

8. pass the Northern Cheyenne Bar examination administered by the Chief Judge.

B. Any lay counselor admitted to practice in the Northern Cheyenne Courts 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 Northern Cheyenne Courts.

D. Any person not a member of the Northern Cheyenne Tribe requesting admission to practice before the Northern Cheyenne Courts must agree to submit to the jurisdiction of the Court in any contempt proceeding arising out of an appearance before the Courts.

#### **2.12.4 Procedure for Admission**

A. Any counsel 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 they have completed a training session in Criminal Law, Civil Law and

Procedure, operation of the Appellate Court and Procedure, and has knowledge of legal writing and drafting of appropriate Court forms.

2. That as an attorney they are 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, they will take the required oath as prescribed in this Code and be bound thereby.

4. That if admitted to practice, the counsel will accept and represent indigent defendants when asked by a Judge of the Court to do so.

B. The Admission Fee of \$200.00 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 Tribal Court Judge shall review the application and may, but need not, investigate into the truth of the matters contained herein. The Judge shall also administer to the applicant the Northern Cheyenne Bar examination. 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 counselor or attorney to practice before the Northern Cheyenne Courts.

#### **2.12.5 Disbarment and Discipline**

A. Whenever it is made to appear to a Judge of the Northern Cheyenne Courts that any counsel admitted to practice before the Courts has acted in an unethical or otherwise improper manner while functioning as counsel, a Judge may order such counselor to appear within ten (10) days and show cause why they should not be suspended from practicing before the Northern Cheyenne Courts.

B. Any Judge who finds that counsel admitted to practice before the Northern Cheyenne Courts 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 they should not be suspended from practicing before Northern Cheyenne Courts.

C. All suspensions from practicing before the Northern Cheyenne Courts shall be for a definite period as ordered by the Judge.

D. Any counsel violating the oath taken under this Chapter 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 Court, within ten (10) days of the receipt of such a complaint, shall hold a hearing at which time the counsel involved may present witnesses and a defense of his or her actions.

#### **2.12.6 Contempt of Court –Appeal**

A lay counselor or attorney held to be in contempt of court may appeal immediately to

the Appellate Court for action by the Appellate Judge.

#### **2.12.7 Disbarment –Appeal**

A lay counselor or attorney disbarred from the Northern Cheyenne Courts can appeal to the Appellate Court. There shall be no further appeal to the Tribal Council.

#### **2.12.8 Oath**

Upon admission to practice as provided herein, a lay counselor or 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 Constitution and laws of the Northern Cheyenne Tribe in all respects.

(3) I will abide by the rules established by the Tribal Council and the Northern Cheyenne Courts.

(4) I will at all times maintain the respect due the Northern Cheyenne 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 Tribe, 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 Courts.

(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.”

#### **2.12.9 Admission Fees for Counsel**

Before counsel shall be admitted to practice before the Northern Cheyenne Courts, and as an annual condition to maintaining that privilege, they shall pay a fee of \$200.00, payable prior to taking the oath set forth herein and annually thereafter. Any counsel failing to pay such annual fee within 30 days after the anniversary date of their admission shall forfeit the right to practice before the Northern Cheyenne Courts until formally readmitted.

#### **2.12.10 Waiver of Admission Fees**

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

#### **2.12.11 Tribal Court Bar Roster**

The Clerks of Court shall maintain a roster of all counsel admitted to the Northern Cheyenne Court bar.





**LAW AND ORDER CODE**  
**TITLE III - JUVENILE CODE**

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## CHAPTER 1. GENERAL PROVISIONS

### SECTIONS

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#### 3.1.1 Purpose 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; 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 Chapters of this Title.

- 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/her parent(s) or other person responsible for his/her welfare and included, 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 the Court prior to his/her eighteenth (18<sup>th</sup>) 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/her;
2. Has suffered or is likely to suffer a physical injury, inflicted upon him/her 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/her parent(s), guardian, or custodian necessary for his/her 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, meaning the child recorded unexcused absences of ten (10) or more whole days or thirty (30) or more parts of a day, whichever is less, in one (1) school year;

2. Ingesting or inhaling alcoholic beverage, narcotics or any other mind-altering substances;

3. Breaking curfew;

4. Habitual runaway, meaning any child who has been found to have been absent from his or her place of lawful residence without the permission of his or her custodian for at least seven (7) days during a one (1) year period;

5. Conduct beyond the control of the person responsible for the child;

6. Habitual subjection to serious physical or psychological injury to him/herself or to others;

7. Seriously endangering the health or well-being of him/herself or others.

I. *Court.* The Trial Court of the Northern Cheyenne Court when exercising jurisdiction under this Juvenile Code unless another court is clearly intended.

J. *Court Judge.* Any duly appointed or elected Trial Judge of the Northern Cheyenne Court when exercising jurisdiction under this Juvenile 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 this Law and Order 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 Human Services personnel, the Bureau of Indian Affairs Social Services, an 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 offence 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/her 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 Human Services personnel, the Bureau of Indian Affairs Social Services, an appropriate county welfare department, or other expert appointed by the Court.

T. *Extended Family*. Includes any person eighteen (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/her 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 Custody*. 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 Human Services personnel, the Bureau of Indian Affairs Social Services, 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 affiliations, 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 Tribe by reporting the abuse or neglect to the Director of the Northern Cheyenne Human Services and to the appropriate Bureau of Indian Affairs Social Services personnel.

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 professionals;

3. A member of the clergy or a priest, who is licensed, recognized, and/or registered as such by the church to which he/she belongs;

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 facility, or any other operator or employee of a child-care facility;

6. Foster care, residential or institutional workers;

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/her 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 civil in 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 him/herself, 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/her 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 the 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 of, or with the consent, of the child, child's parent(s), his/her 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.

E. Days in which the Tribal Court is closed for administrative or inclement weather purposes.

### **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 forty-eight (48) 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 request 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) years 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**

### **SECTIONS**

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### **3.2.1 Custody**

A child may be taken into custody by a law enforcement officer when the officer has a reasonable belief that the child is delinquent.

### **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 the child taken into custody for committing a delinquent act is still alleged to be delinquent, in which case the child shall instead be detained in a secure facility.

### **3.2.3 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 and adult jail or lock-up only where necessary for administrative purposes of identification, processing, transfer to another jurisdiction, transfer to Court official as or transfer to juvenile shelter or detention facilities. Any such detention of children in 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.

### **3.2.4 Complaint**

A. Within two (2) days of taking the child into custody, subject to the exclusions provided in Section 3.1.6, a complaint shall be filed stating the following:



1. The reasons that the delinquent child should remain in custody;
2. The basis of the Court's jurisdiction;
3. The name, address and birthdate of the child;
4. The present custodial status of the child; and
5. The names and addresses of the child's parent(s), guardian, or custodian and any other relevant persons.

B. When efforts at diversion have been unsuccessful, the prosecutor may then charge the delinquent child with any criminal or civil actions deemed appropriate by the prosecutor on behalf of the Northern Cheyenne Tribe. The details included in the complaint shall then also include:

1. the offense(s) charged against the child;
2. The facts and circumstances surrounding the offense(s) or charge(s); and
3. What efforts if any have been made to divert the child from the Court System.

### **3.2.5 Summons**

A. Within forty-eight (48) hours of filing of a petition, subject to the exclusions provided in Section 3.1.6, an officer of the Court shall serve a summons by hand delivery if possible or by certified mail return receipt requested, to:

1. The child;

2. The child's representative if appropriate;
3. The parent(s), 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;
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/her right to have representation.

### **3.2.6 Records and Investigations**

The Court may subpoena the records of Social Service and/or Human 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 are not violated.

### **3.2.7 Initial Arraignment**

The Court shall hold an initial hearing and arraignment within five (5) days of the child being taken into custody, subject to the exclusions provided in Section 3.1.6. At

minimum, all due process rights as provided in this Title shall apply. Waivers of such rights must be knowing and voluntary. The Court shall determine the following at the hearing:

A. 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/her parents, guardian, or custodians.

B. Whether the delinquent child is found guilty or innocent of the alleged charges.

### **3.2.8 Dispositional Hearing**

Following the Court's finding of the child's guilt or innocence, the Court shall render an order on the disposition of the child. The date of the dispositional hearing shall be set by the Court and such date shall be within sixty (60) days of the initial hearing. Each criminal or civil offense alleged against the delinquent child shall be separately heard and addressed by the Court.

Following the Court's finding of the child's guilt or innocence on each of the charges brought against the delinquent child, the Court shall render an order on the disposition of the child. The Court shall pursue a Court 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.

The Court may order any of the following disposition options:

1. Release the child to the parent(s), guardian or adult custodian with no further action;
2. Release the child to the parent(s), guardian or adult custodian and refer them to appropriate community-based service agencies;
5. Place the child on probation;
6. 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;
7. Accept an offer of restitution if the child makes it voluntarily and restitution is practicable;
8. Any traditional remedy when appropriate; or
9. Any combination of the above.
10. In addition, where the child has been found delinquent, the child may be committed to a secure juvenile detention facility.

### **3.2.9 Dispositional Orders**

The Court shall set forth the disposition in an order which contains specific time limitations and conditions on the disposition. In a delinquency proceeding, no order shall be in effect longer than six (6) months or after the child reaches the age of eighteen (18) years.

### **3.2.10 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. CHILDREN IN NEED OF INTERVENTION**

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### **3.3.1 Custody**

A child shall be taken into custody by a law enforcement officer, a representative of Northern Cheyenne Human Services, or an appropriate welfare official in any case where they have a reasonable belief that the child is a child in need of intervention as defined in Section 3.1.2.H.

### **3.3.2 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 the child taken into custody is still alleged to be in need of intervention following their custodial pickup, in which in which case the child in need of intervention shall instead be detained in a secure facility.

### **3.3.3 Complaint**

A. Within two (2) days of taking the child into custody, subject to the exclusions provided in Section 3.1.6, a complaint shall be filed stating the following:

1. The reasons that the child in need of intervention should remain in custody.
2. The basis of the Court's jurisdiction;
3. The name, address and birthdate of the child; and
4. The present custodial status of the child;
5. The names and addresses of the child's parent(s), guardian, or custodian and any other relevant persons.

B. When efforts at diversion have been unsuccessful, the prosecutor may then charge the child in need of intervention with any civil actions deemed appropriate by the prosecutor on behalf of the Northern Cheyenne Tribe. The details included in the complaint shall then also include:

1. the offense(s) charged against the child;
2. The facts and circumstances surrounding the offense(s) or charge(s); and
3. What efforts if any have been made to divert the child from the Court System.

### **3.3.4 Summons**

A. Within forty-eight (48) hours of filing of a petition, subject to the exclusions provided in Section 3.1.6, an officer of the

Court shall serve a summons by hand delivery if possible or by certified mail return receipt requested, to

1. The child;
  2. The child's representative if appropriate;
  3. The parent(s), 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;
  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/her right to have representation.

### **3.3.5 Records and Investigations**

The Court may subpoena the records of Social Service and/or Human 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 are not violated.

### **3.3.6 Initial Hearing**

The court shall hold an initial hearing, within five (5) days of the child being taken into custody, subject to the exclusions provided in Section 3.1.6. At minimum, all due process rights as provided in this Title shall apply. Waivers of such rights must be knowing and voluntary. The Court shall determine the following at the hearing:

- A. 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/her parents, guardian, or custodians.
- B. Whether the child in need of intervention is found guilty or innocent of the alleged charges.

### **3.3.7 Dispositional Hearing**

Following the Court's finding of the child's guilt or innocence, the Court shall render an order on the disposition of the child. Each civil offense alleged against the delinquent child shall be separately heard and addressed by the Court. The date of the dispositional hearing shall be set by the Court and such date shall be within sixty (60) days of the initial hearing. The Court shall pursue a Court 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.

The Court may order any of the following disposition options:

1. Release the child to the parent(s), guardian or adult custodian with no further action;
2. Release the child to the parent(s), guardian or adult custodian and refer them to appropriate community-based service agencies;
5. Place the child on probation;
6. 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;
7. Accept an offer of restitution if the child makes it voluntarily and restitution is practicable;
8. Any traditional remedy when appropriate; or
9. Any combination of the above.

### **3.3.8 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 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 eighteen (18) years.

### **3.3.9 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 4. CHILDREN IN NEED OF CARE**

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### **3.4.1 Custody**

A child may be taken into custody by a law enforcement officer, a representative of Northern Cheyenne Human Services, or an appropriate welfare official in any case where they have reason to believe the child is a child in need of care as defined in Section 3.1.2.G.

### **3.4.2 Placement**

A. The child's parent(s), guardian or custodian shall be notified of the child in need of care's custody as soon as possible. The

child shall be released into the custody of the parent(s), guardian or custodian unless the Court determines that placement of the child is in the immediate best interests of the child. 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 Human Services.

B. 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.

### **3.4.3 Complaint**

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

remain in custody. In child of 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 Human Service agencies and release the child to the custody of the parent, guardian or custodian.

### **3.4.4 Initial Hearing**

The court shall determine, within seventy-two (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/her parents, guardian, or custodians.

### **3.4.5 Temporary Investigation Authority or Informal Conference**

Where the Court has made preliminary finding that further custodial care of the child is necessary, the Court shall order the designated officials of the to conduct a preliminary investigation in coordination with BIA Social Services into the matter.

The prosecutor, BIA investigation 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 in need of care;
- B. An informal adjustment would be in the child's best interest; and
- C. The child and the child's parent(s), guardian, or custodian consent to an informal adjustment with the knowledge that the consent is voluntary.

### **3.4.6 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 the parent(s), guardian or adult custodian with no further action;
2. Release the child to the parent(s), 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;
4. Place the child with a community-based agency responsible for the care of such children;
5. Placing the child with a responsible member of the extended family; or
6. 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 recorded in the Court record.

### **3.4.7 Time Limitation on Informal Disposition**

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

### **3.4.8 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 person's 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.

### **3.4.9 Proceeding on a Formal Petition**

The prosecutor, in his or her discretion, may then file a petition on behalf of the Tribe alleging the child is abused, neglected or dependent when formal court action is in the best interests of the child.

### **3.4.10 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 child in need of care proceeding, the charges being filed under this title; and
- F. The facts and circumstances surrounding the offense(s) or charge(s); and

#### **3.4.11 Summons**

A. Within seventy-two (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, to

- 1. The child;
- 2. The child's representative if appropriate;
- 3. The parent(s), 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 seventy-two (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/her right to have representation.

#### **3.4.12 Records and Investigations**

The Court may subpoena the records of Social Service and/or Human 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 are not violated.

#### **3.4.13 Setting an Adjudicatory 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 thirty (30) days.

#### **3.4.14 Adjudicatory and Dispositional Hearing**

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 such rights must be knowing and voluntary

#### **3.4.15 Dispositions Permissible**

Following the Court's finding of the child's abuse, dependency, or neglect, the Court shall render an order on the disposition of the



child. The Court shall pursue a Court 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.

The Court may order any of the following disposition options:

- 1. Release the child to the parent(s), guardian or adult custodian with no further action;
- 2. Release the child to the parent(s), 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;
- 4. Place the child with a community-based agency responsible for the care of such children;
- 8. Any traditional remedy when appropriate; or
- 9. Any combination of the above.
- 10. 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.

### **3.4.16 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 child in need of care proceeding, no order shall continue after the child reaches the age of eighteen (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.

B. The Court shall hold a permanency hearing no less than annually with the parent(s), guardian(s), custodian(s), foster placement, and/or community-based agency in which the child is placed to determine the status of the child and provide updates and recommendations on courses of action to meet the best interests of the child.

### **3.4.17 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 5. VOLUNTARY AND INVOLUNTARY TERMINATION OF PARENTAL RIGHTS**

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### **3.5.1 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(s) and child is viewed as such an extreme measure that the law should ensure that all legal and cultural rights of the parent and the child are protected. One measure intended to ensure 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 proceeding from the adoption proceedings.

### **3.5.2 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.

### **3.5.3 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.

### **3.5.4 Petition Requirements**

The petition for termination of the parent-youth relationship shall include:

A. The name and place of residence of the petitioner;

B. The name, sex, date and place of birth and residence of the child;

C. The relationship of the petitioner to the child, if any;

D. The names, addresses, dates of birth of the parents, if known;

E. Where the child's parent is a minor, the name and address of the child's grandparents, if known;

F. The names and addresses of the person having legal custody or guardianship of the child, or acting in the place of the parent of the child; and

G. The grounds on which termination of the parent-child relationship are sought.

### **3.5.5 Summons Requirements**

The summons shall comply with the requirements set out in 3.2.5 of this Title.

### **3.5.6 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 Chief Judge. Relevant records of Social Service Agencies, Human 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.

### **3.5.7 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 a recommendation to the Court.

### **3.5.8 Termination Hearing**

A. The Court shall conduct a termination hearing within thirty (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. The parents have relinquished the child;
2. The child has been abandoned by the parents;
3. The parent is convicted of a felony in which sexual intercourse occurred or is a minor adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred;
4. The parent has:
  - a. Subjected a child to aggravated circumstances, including but not limited to abandonment, torture, chronic abuse, or sexual abuse or chronic, severe neglect of a child;
  - b. Committed, aided, abetted, attempted, conspired, or solicited deliberate homicide of a child;
  - c. Committed aggravated assault against a child;

d. Committed neglect of a child that resulted in serious bodily injury or death; or

e. Had parental rights to the child's sibling or other child of the parent involuntarily terminated and the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately care for the child at issue.

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

### **3.5.9 Dispositions Permitted at Termination Hearing**

Appropriate dispositions provided in 3.4.15 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 evidence that termination is in the best interests of the child.

### **3.5.10 Relinquishment of Parental Rights (Voluntary Termination of Parental Rights)**

Parental rights may be relinquished (voluntarily terminated) by written document if signed by the parent(s) in the presence of the presiding judge 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.

### **3.5.11 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.

### **3.5.12 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.



## **LAW AND ORDER CODE**

### **TITLE IV - CIVIL PROCEDURE AND CIVIL CODE**

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## PART A. RULES OF CIVIL PROCEDURE.

### CHAPTER 1. GENERAL PROVISIONS

#### SECTIONS

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#### 4.1.1 Scope of Rules

A. *Scope.* Except when different rules prescribed in the Law and Order Code specifically apply, these rules shall govern the procedures of the Northern Cheyenne Trial Court (hereinafter the "Court") 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. *Applicable Laws and Discretionary Guidance.* In determining any case over which it has jurisdiction, the Court shall give binding effect to:

1. Any applicable provision of the Constitution of the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation or any law of the Tribe not in conflict with federal law.
2. Any applicable constitutional provision, treaty, law, or any valid regulation of the United States.
3. Any applicable custom or usage of the Northern Cheyenne Tribe not in conflict with the law of the Tribe or of the United States. Where any doubt arises as to such

custom and usages, the Court may request the testimony, as witnesses of the Court, of persons familiar with such customs and usages.

4. In any case wherein provisions which would govern specific procedural issues are not contained in this chapter, any other Title of the Northern Cheyenne Law and Order Code, or any other applicable law of the Northern Cheyenne Tribe, the Court may look to the Law of the State of Montana for guidance.

Nothing in this section shall be construed as authorizing the applicability of any state or federal procedural or substantive law or statute to civil proceedings in the Northern Cheyenne Courts.

D. *One Form of Action.* There shall be one form of action known, except in criminal cases, as a "civil action."

E. *Limitations on Civil Actions.* Unless otherwise specifically provided in this Code, the following limitations on the bringing of civil actions will apply:

1. Any action against the Tribe or its Instrumentalities, or against Tribal Representatives arising from the performance of their official duties, must be commenced within one year of the date of the cause of action accrued.
2. Any other action must be commenced within three years of the date of the cause of action accrued.
  - a. However, 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.

F. *Election Contests.* Election Contests, as defined in Section 22 of the Tribe's Revised Election Ordinance, shall proceed according to this Title; however where provisions of this Title conflict with Section 22 of the Election Ordinance, the Election Ordinance shall govern. Election Contest appeals shall take precedence over all other matters before the Trial Court and judgment shall be entered as promptly as possible.

#### **4.1.2 Civil Contempt**

A. *Acts or Failures to Act Which Constitute Contempt of Court.* Any person may be found in 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 or other willful neglect or violation of duty of an attorney or lay counselor,
5. Failure of an attorney or lay counselor to perform or refrain from

performing some act or service as directed by the Court;

6. Acting as an officer, spokesman or other official of the Court without authority;

7. Publication of false or grossly inaccurate report of Court proceedings;

8. Requesting a jury trial and failing to appear on the date the jury trial is scheduled; or

9. 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. When contempt of Court is committed in the presence of or so near the Court, it 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 Trial Judge (hereinafter "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.

## CHAPTER 2. COMMENCEMENT OF ACTION AND PRELIMINARY MATTERS

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#### 4.2.1 Commencement of Action - Service of Process

A. *Commencement of Action.* A civil action commences by filing a complaint and the filing fee, as listed on the Court's current fee schedule, with the Court and serving a copy of the complaint 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. A case shall be dismissed without prejudice if the plaintiff does not complete service or move for service by publication within 30 days of filing the complaint with the Court.

B. *Service of Process.* Service of process shall consist of the plaintiff delivering to the defendant 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. Service may be made in one of the following ways

a. To the defendant(s) personally; or

b. Upon a person of suitable age and discretion over 14 years old at the defendant's home or principal place of business; or

c. Upon an officer, managing agent, or partner of the defendant(s).

3. At the plaintiff's request the Court may order, in its discretion, that service be made by Tribal law enforcement officer or by a person specially appointed by the court.

4. If the defendant(s) cannot be found within the exterior boundaries of the Northern Cheyenne Reservation, service may be had by certified mail with delivery restricted to the defendant's usual residence or principal place of business. If the defendant has retained an attorney or lay counselor, delivery may be made to said attorney or counselor.



5. Service by publication may be made upon order of the Court for good cause shown by;

a. Publishing the contents of the summons in a local newspaper of general circulation, including, if available, the Northern Cheyenne Tribe's newsletter and newspaper, at least once a week for four (4) consecutive weeks; or

b. Posting the contents of the summons on the "Public Information and Announcements" page of the Northern Cheyenne Tribe's website; or

c. By posting the contents of the summons in the Littlewolf Capital Building with other community announcements.

In addition to any of the above methods, the plaintiff must provide the Court with a copy of the complaint or paper.

6. Service may be made by any law enforcement officer or other person, not a party to the proceedings, 18 years of age or older.

7. Service upon a person otherwise subject to the jurisdiction of the Northern Cheyenne Courts may be made anywhere in the United States. A party should first attempt to serve a party within the exterior boundaries of the Northern Cheyenne Reservation.

8. Proof of service must be made to the Court. The plaintiff must file with the Clerk of Court a receipt of service, endorsed with the name of the person serving and the date, time, and place of service.

9. If a defendant refuses to accept service, service shall be deemed performed if the defendant is informed of the purpose of the service and offered copies of the papers served in accordance with Section 4.2.1.B.2.-6.

10. All documents, except for the complaint, required to be filed shall be served as under this rule or may be served on the counselor or attorney of a party. Service of all documents, except the complaint, may be made by mail, first class postage, prepaid and properly addressed.

11. Enforcement of service of process, judgments, warrants, and any other exercise of civil authority of a County, State, or other Tribe shall be sought by written application to the Court, excluding extradition matters which are to be handled under Title V Rule 4.

a. The Court shall review the application within five (5) days of filing. The Court shall then decide whether or not to enforce the process of the other Court or issuing jurisdiction. The Court shall have full and total discretion regarding this matter.

b. Upon entry of the Court's order enforcing the process, such process and a copy of the

Court's order shall be personally served on the appropriate party by an officer of the Court or a Tribal law enforcement officer.

c. Nothing in this subsection shall be deemed to have increased or decreased the jurisdiction of the Tribe or of any other court.

12. Service upon a state shall be upon the Secretary of State.

13. Service upon any branch or agency of the federal government shall be in accordance with the Federal Rules of Civil Procedure.

#### **4.2.2 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 seven (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 five (5) business days prior to the time specified for hearing.

D. *Service by Mail.* Whenever service is accomplished by mail, three (3) days shall be added to the prescribed period of time, but addition shall not cause Sundays or legal holidays to be counted in the time period if they would not otherwise have been counted.

#### **4.2.3 Pleadings, Motions, Orders**

A. *Form of Documents.* All documents filed in any action shall be

1. Typed double spaced, except for matters customarily single spaced and contain at least a 2 inch top margin and 1 inch left side margin. Writing shall appear on one side of the page only and each page shall be numbered at the bottom

a. When a plaintiff is represented pro se, the complaint may be handwritten using a form provided by the Court. The writing must be in blue ink.

2. Contain the name and office address, or if none, the residence address, and telephone number of the attorney or lay counsel for the party in whose behalf the paper is presented or if the party is appearing pro se. Should a party be without an address or telephone, the document shall set forth an address or telephone where the party may be contacted; and

3. Contain the Court file number on the first page. Counsel shall, upon the initial filing of any pleading, request and receive this number from the Court.

4. Whenever a document requires a signature, the signature shall be written in blue ink.

5. The Clerk of Court may reject any documents that do not comply with this subsection.

B. *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.

C. *Motions and Orders*

1. Motions. An application to the Court for an order shall be made by motion. Motions shall be made only to ask the Court to adjudicate on matters of law.

a. The Motion must be typed unless made orally during a hearing or trial and state with particularity:

1. The grounds for seeking the order; and

2. Relief or order sought.

b. A motion and notice of motion shall be set forth together.

c. For written motions, the moving party shall serve and file one document containing the substance of the motion and a brief

discussing the requirements of section C.1.a.1 and 2 of this Rule. The movant may request, prior to filing the motion, that the Court grant an extension of time to file a brief. The adverse party shall have ten (10) days after receipt of the motion and brief within which to serve and file an answer brief.

2. A pre-trial motion must be filed with the Court at least five (5) days before the trial or hearing date.

3. Failure to file briefs within the prescribed time may subject any motion to summary ruling. Failure to file a brief by the moving party shall be deemed an admission that the motion is without merit. And failure to file a brief by the adverse party shall be deemed an admission that the motion is well taken.

4. Orders. An order includes every direction of the Court whether included in a judgment or not.

5. Hearings on Motions and Orders

a. Hearings on motions shall be set at such time and place as has been approved by the Court. The Court may order or conduct a hearing on a motion if the Court believes a hearing would be beneficial, or upon a timely written request of either party.

b. 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.

#### **4.2.4 General Rules of Pleadings**

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 each 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. He shall state his defense to each claim and shall admit or deny each claim. If the party does not know the truth of a claim, he shall so state and that statement shall have the effect of 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.

#### **4.2.5 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-and a designation as to what kind of pleading it is. All pleadings shall contain 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.

#### **4.2.6 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 which 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 (10) 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 the date of service.

#### **4.2.7 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.

#### **4.2.8 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.

#### **4.2.9 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, 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. A person must be joined as a party if it would be impossible to reach a just result without such party. If it is infeasible to join a person who is a required party, the court must determine whether, in the interest of justice, the action should proceed among the existing parties.

#### **4.2.10 Intervention**

A person may be permitted in the discretion of the Court to intervene and be treated in all respects as a party to an action in cases in which property in which he claims an interest may be substantially affected by disposition of the action or where a question of law or fact common to a claim of his may be litigated.

#### **4.2.11 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.

#### **4.2.12 Discovery**

A. *Interrogatories and Requests for Admission.* A party may submit written interrogatories and/or requests for admissions 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. The petitioner must serve each expected witness at least 20 days before the hearing or trial date and provide them not less than ten (10) days notice of the deposition, 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. These requests must be made at least 40 days before a trial or hearing date. 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, harassment, embarrassment, oppression, or undue burden or expense, and the Court may order that the discovery cease

or proceed only upon specified conditions. Motions for a protective order should be made in a timely manner after receipt of the request for the material(s) at issue.

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, illness, death, or imprisonment, a sworn deposition may be offered in lieu of testimony of the witness who gave the deposition. This exception does not apply if it appears that the absence was procured by the person offering the deposition.

#### **4.2.13 Pre-Trial Conference**

A. *Purpose.* A pre-trial conference shall be held as soon as practicable, but at least 14 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. The presiding Judge shall set the time and date for the conference.

B. *Who Attends.* The Plaintiff(s), Defendant(s) and their counsel, if they have one, are required to attend the pre-trial conference. 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 and only if their presence will further the purpose stated above.

C. *Conduct of Conference.* The parties shall be prepared orally, or in writing on request of the presiding judge to:

1. Discuss the contentions of the parties and outline the legal theories upon which the action or defense is based;
2. Discuss any problems which are believed to be of importance and should be decided by the Court in advance;
3. Suggest any contemplated amendments to the pleadings;
4. Discuss any problems of discovery including:
  - a. The general nature of any requests for admission or answers to interrogatories they intend to file;
  - b. The documents they wish to inspect and the names of the witnesses they intend to depose and the method and place of taking depositions;
  - c. Any documents that will be produced without the

requirements of a motion to produce;

d. Suggest a timeline for accomplishing the various steps of the discovery process; and

e. Suggest a date when Discovery will be completed; and

5. Discuss deadlines, to be set by the judge, for any of the above mentioned items.

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.

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 supersede pleadings for the purpose of framing issues for trial.

## CHAPTER 3. TRIAL

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#### 4.3.1 Jury Trials

A. *When Allowed.* A party may request a trial by jury in all civil actions involving a claim or claims exceeding \$1,000 except where prohibited by this Code. Trial by jury is not permitted in domestic relations cases, cases involving adoptions, probate, minors, incompetence, involuntary commitments, exclusions, hearings on court orders, contempt, election contests or cases in the Appellate Court or Constitutional Court. The request for jury trial shall be filed, along with a fee, as listed on the Court's current fee schedule, 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. Any other party may specify, no later than the pre-trial conference, any other issues he wishes to be so tried as well. 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 the parties.

#### C. *Designation by Judge*

1. A Judge may, upon his own motion, order a 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 without a jury if either party to the issue fails to appear at trial, regardless of any request made for a jury trial on such issue.

#### 4.3.2 Assigning Cases for Trial

A. *Assignment of Judge and Date.* The Chief Trial Judge shall designate the Judge who will hear a case. The designated Judge shall assign a trial date for the earliest reasonable time.

B. *Postponement.* Upon motion of a party and a 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.



### 4.3.3 Dismissal of Actions

A. *Voluntary Dismissal.* Prior to the filing of responsive pleadings as described in section 4.2.6, a motion to dismiss, or a motion 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 and in the discretion of the Court. 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.

### 4.3.4 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.

### 4.3.5 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 who are minors, elders or other vulnerable persons.

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 ensure 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.

**4.3.6 Subpoenas**

A. *Issuance*

1. Upon request of any party or upon the Court's own initiative, the Court shall issue subpoenas to compel the testimony of witnesses, or the production of books, records, documents, or any other physical evidence relevant to the determination of the case and not an undue burden on the person possessing the evidence. The Clerk of Court may act on behalf of the Court and issue subpoenas which have been signed by a judge and which are to be served within the confines of the jurisdiction of the Northern Cheyenne Reservation.

2. A subpoena shall bear the signature of a Judge or Clerk of the Court and it shall state the name of the Court, the name of the person or description of the physical evidence to be subpoenaed, the title of the proceedings, and the time and place where the witness is to appear, or the evidence is to be produced.

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 Criminal Contempt.

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 subpoena.

D. *Challenges.* Any motion to quash or other challenge to a subpoena shall be governed by Section 4.2.3.C.

#### 4.3.7 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.* Any resident of the Northern Cheyenne Reservation who is an enrolled Tribal member 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. Each year the Court Clerk or his designee shall randomly choose a list containing the names and addresses of at least 50 but not more than 75 eligible jurors.

E. *Trial Juries.* The Clerk shall subpoena not less than twelve (12) persons from the list of eligible jurors to appear and be available as jurors whenever a jury trial is scheduled in a civil 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. Failure of a juror to abide by the Judge's instructions shall be grounds for dismissal and may constitute contempt of Court.

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.

#### **4.3.8 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.

#### **4.3.9 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.

#### **4.3.10 Motions for Directed Verdict and for Judgment Notwithstanding the 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.

#### **4.3.11 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, the Court may amend or add findings and the judgment may be amended accordingly.

### **CHAPTER 4. POST-TRIAL**

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#### **4.4.1 Judgment; Costs**

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. A judgment by default shall not be different in kind, or exceed in amount, that specifically prayed for in the claim for relief.

D. *Costs.* 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 Appellate Court may award costs in a like manner. Costs shall include filing fees, reasonable and necessary expenses of involuntary witnesses, costs associated with compensation and expenses of the jury, and such other proper and reasonable expenses.

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 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.

#### **4.4.2 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.* Where any party, after being served with a copy of the complaint as provided in section 4.2.1, fails to appear at the hearing, at trial, or otherwise to prosecute or defend a case, 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. 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.

#### **4.4.3 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.

#### **4.4.4 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.

#### **4.4.5 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 filing with the Court and 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 filed with the Court and served not later than 10 days after entry of the judgment.

#### **4.4.6 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 section 4.4.5.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 section 4.4.8, or by independent action.

#### **4.4.7 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.

#### **4.4.8 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 ten (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 Appellate Court Not Limited.* The provisions in this rule do not limit any power of the Appellate Court to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of any 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 section 4.4.1.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.

#### 4.4.9 Injunctions

A. *Preliminary Injunction Notice.* No preliminary injunction shall be issued without notice to the adverse party.

B. *Temporary Restraining Order; Notice; Rehearing; Duration.* The Court may, without requiring prior notice to the respondent, issue an immediate temporary order of protection, also known as a restraining order, for up to 15 days if the court finds, on the basis of the petitioner's sworn petition or other evidence, that immediate and irreparable harm or damage may result to the petitioner if an order is not issued 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. The Court shall not allow more than one extension of a temporary restraining order absent extraordinary circumstances.

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 two (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.

The terms "restraining order" and "protection order" as used in this Code shall have the same meaning.

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 domestic partner, married person, or other romantic partnerships in a suit against the other party to the relationship.

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.

#### **4.4.10 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 anyone 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 re-arraignment, retrial, custody, bail, or discharge as the Court may deem just and proper in the case.

#### **4.4.11 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 (5) 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 subsection 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 Tribal 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 Bureau of Indian Affairs 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 appropriate Tribal entity 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 (1) 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 three (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 appropriate Tribal entity 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 the sale of the 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 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 upon motion and/or hearing before the Court.

In addition to the exemptions set out in subsection C, taxes and other legitimate withholdings may be withheld prior to payment pursuant to 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 section, 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.

#### **4.4.12 Appeal**

A. *Appellate Court.* All appeals provided for by this Code or ordinances

shall be heard by the Appellate Court of the Northern Cheyenne Court.

B. *Right to Appeal.* Any party who is aggrieved by any final order, commitment, or judgment of the Trial Court may appeal in the manner prescribed by Chapters 5, 6, and 7 of Title II and this Section.

C. *Bond on Appeal.* At the time of filing the Request for Appeal, the appellant shall also file cash or a bond in an amount set by the 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 Appellate Court 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 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 Court Clerk shall also serve as the Clerk of the Appellate Court. The Clerk shall prepare, certify, and file with the Appellate Court all papers comprising the record of the case appealed. A separate docket shall be maintained for the Appellate Court in which shall be recorded each stage of the proceeding on each case appealed.



## **PART B. CIVIL CODE**

### **CHAPTER 5. EXCLUSION**

#### **SECTIONS**

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#### **4.5.1 Who May Be Excluded**

Any non-member of the Northern Cheyenne Tribe, except persons authorized by Federal or Tribal law to be present within the boundaries of the Northern Cheyenne Reservation and owners/lessees of non-trust land within the Reservation, may be excluded from the Reservation. [*Ord. DOI-001 (2019)*]

#### **4.5.2. Grounds for Exclusion**

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

A. Commission of any crime as defined by State or Federal law or violation of this Code or any ordinance or resolution of the Tribe.

B. Commission of any act which, if committed by a Tribal member, would be a criminal offense under this Code or any other ordinance or resolution of the Tribe.

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 Tribal Council designating such area as closed for any reason.

D. Use, possession, sale, manufacture, or distribution of any dangerous drug or controlled substance prohibited by the Tribal criminal code (Title VII).

E. Defrauding any enrolled Tribal member of just compensation for his or her labor or service of any nature done at the request of the non-member.

F. Any action causing physical injury to any person or damage of any nature to Tribal property or the property of any enrolled Tribal member, including but not limited to:

1. Unauthorized cutting of timber or vegetation

2. Unauthorized grazing

3. Unauthorized hunting, fishing or taking of any livestock, fish, or wild animals

G. Possession or use of a firearm or dangerous weapon.

H. Any intentional conduct resulting in the fear of bodily harm, or bodily harm itself.

#### **4.5.3 Exclusion Procedure**

A. *Due Process*

Either the Tribal Council or the Tribal Court may order a non-member excluded from the Reservation under this Chapter, provided that the tribunal ensures that the non-

member receives due process as set forth in this Section.

#### B. *Petition for Exclusion*

A petition to exclude a non-member from the Reservation must state the reason(s) for the proposed exclusion.

1. To the Court. The Tribal Prosecutor may petition the Trial Court for exclusion of a non-member.

2. To the Tribal Council. Any member of the Tribal Council may petition the Tribal Council for exclusion of a non-member.

#### C. *Notice of Hearing*

1. Service. After receiving a petition for exclusion of a non-member, the tribunal shall set the matter for a hearing. A non-member must receive a copy of the petition for exclusion and notice of the hearing, which should be served upon the non-member personally or by certified mail.

2. Date. The date of the hearing shall be not less than 10 (ten) days after service of the notice or mailing of the notice, whichever is later, provided that if the tribunal shall have reasonable cause to believe an emergency exists, and the notice so states, the hearing may be held no less than 24 hours from the time of service.

#### **4.5.4 Exclusion Hearing**

The tribunal shall hold a hearing to decide whether the non-member shall be excluded from the Reservation. The non-member shall be given an opportunity to present a defense as such hearing and may be represented by counsel. The tribunal may observe any procedural rules or practices

that it finds, in its discretion, will provide a fair hearing, including without limitation any rules of civil procedure in this Title relating to civil hearings and trials.

1. By the Court. After the hearing, or after the time set for the hearing if the non-member has received notice and has failed to appear, the Trial Court Judge may order the non-member excluded from the Reservation, may permit the non-member to remain upon the Reservation on such conditions as the Judge sees fit to impose, or may dismiss the petition without so ordering.

2. By the Tribal Council. The Tribal Council may be represented by counsel who shall act as the prosecutor of the petition. After the hearing, or after the time set for the hearing if the non-member has received notice and has failed to appear, the Tribal Council may, by majority vote, ordain to exclude the non-member from the Reservation, may permit the non-member to remain upon the Reservation on such conditions as the Council sees fit to impose, or may dismiss the petition without so ordaining.

#### **4.5.5 Appeals**

Appeals from an exclusion order issued by the Court shall be to the Appellate Court. Appeals from an exclusion ordinance issued by the Tribal Council shall be to the Constitutional Court unless the Tribal Council states that the ordinance is not subject to appeal.

#### **4.5.6 Enforcement**

All exclusion orders and ordinances shall remain in force until revoked by the issuing tribunal or by an appellate body with

jurisdiction, unless the order or ordinance specifically provides otherwise.

Failure to obey such an order or ordinance will result in referral to law enforcement authorities, who shall promptly escort the person excluded to the boundary of the Reservation.

#### **4.5.7 Physical Removal**

In cases where there is an immediate danger to life, health, welfare or property of the Tribe or a Tribal member, and where any delay may result in irreparable damage, the Trial Court may order any Reservation police 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 or ordained excluded from the Reservation under this Chapter. If service of the notice provided for in Section 4.5.3.C. has not already been made upon the non-member, the Trial Judge shall cause the officer to serve the notice upon the non-member at the time of removal or as soon after removal as possible.

In all cases where the non-member has not already been ordered or ordained excluded by the Tribe, the Trial Judge shall notify the non-member of a place on the Reservation boundary where he or she may re-enter in the company of a law enforcement officer for the purpose of attending the exclusion hearing. The order shall command the officer to accompany the non-member while he or she is on the Reservation coming to and leaving the hearing.

#### **4.5.8 Separability**

If any provision of this Chapter, or its 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 shall not be affected.



## **LAW AND ORDER CODE**

### **TITLE V – RULES OF CRIMINAL PROCEDURE**

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## CHAPTER 1: SCOPE, PURPOSE AND CONSTRUCTION

### SECTIONS

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##### **Rule 1. Scope, Purpose and Construction**

A. These rules shall govern the procedure in the Trial Court of the Northern Cheyenne Court (hereinafter “Court” or “Tribal 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. When necessary, the Trial Court will supplement the Rules of Criminal Procedure of this Title with the Federal Rules of Criminal Procedure.

D. The Northern Cheyenne Tribal Council hereby authorizes the Bureau of Indian Affairs to use and enforce this Criminal Procedure Code.

E. *Computation of Time.*

1. As used in this Title, *business day* or *working days* means any day that is not a Saturday, Sunday, Tribal or Federal holiday, or a day on which the Court is closed.

2. In computing any period of time set forth in this Title, the day on which the period is to commence shall not be counted and the last day of the period shall be counted; provided that any time period under

seven (7) days will not include the intermediate Saturdays, Sundays, Tribal or Federal holidays or any day on which the Court is closed, and any such period which would otherwise end on a Saturday, Sunday, Tribal or Federal holiday, or any day on which the Court is closed will be deemed to end on the next day that the Court is open.

## CHAPTER 2: PROCEEDINGS BEFORE TRIAL

### SECTIONS

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##### **Rule 2. Commencement of Criminal Proceedings**

A. *Complaint.* A complaint is the written statement of the essential facts charging that a named individual has committed a particular criminal offense. All criminal prosecutions shall be initiated by a complaint filed with the Court signed by the prosecutor and sworn to before a judge. All complaints initiated by the prosecutor shall be based on

probable cause that the crime charged happened and that the defendant(s) committed the crime charged. A judge shall have the authority to demand the filing of an information by the prosecutor or to hold a preliminary hearing to determine whether lawful probable cause as to the crime exists, and whether the appropriate defendant(s) exist prior to the issuance of a summons or warrant for the arrest of the defendant(s).

B. A complaint shall contain:

1. A written statement of the violation describing in ordinary language the nature of the offense committed, including the time and place as nearly as may be ascertained. Statements or affidavits by persons having personal knowledge may be expressly referenced in and attached to the complaint;
2. The name and description of the person(s) alleged to have committed the offense;
3. A statement describing why the Court has personal jurisdiction over the defendant;
4. A description of the offense(s) charged including the Code sections of the offense(s).
5. A statement of the maximum authorized penalty.
6. The signature of the prosecutor sworn to before a judge. Where complaints may be signed by a law enforcement officer, an electronic signature of the officer is acceptable.

C. 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.

D. *Time Limit for Commencing Criminal Prosecution.* Prosecution for any offense must be commenced within the period specified unless otherwise stated in this Code:

1. Class A and B offenses - 2 years.
2. Class C offenses - 1 year
3. Misdemeanor offenses - 1 year

E. Where the complaint alleges violation of Section 7.4.1, 7.4.2 or 7.4.3 (murder, manslaughter, or negligent homicide) of this Code, there is no time limit for filing the complaint.

F. Where the complaint alleges violation of Class A sexual offense under Title 7 of this Code, and the alleged victim is eighteen (18) years of age or less at the time of the offense, a prosecution may be commenced within seven (7) years after the victim reaches the age of eighteen (18) years old.

G. 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. The time period does not start until the offender is arrested.

**Rule 3. Arrests, Summons and Warrants**

A. *Arrest.* Arrest is the taking of a person into police custody in order that he/she may be held to answer for a criminal offense.

1. No law enforcement officer shall arrest any person for a criminal offense except when:

a. A judge has signed a warrant commanding the arrest of such person, and the arresting officer has the warrant in his/her possession or knows for a certainty that such a warrant has been issued; or

b. The offense occurs in the presence of the arresting officer; or

c. The arresting officer shall have probable cause to believe that the person arrested committed the offense.

2. *Probable cause* means such facts and circumstances which would lead a reasonable person to believe that an offense has been committed by the accused.

B. *Summons in Lieu of Arrest Warrant.* A judge may, in lieu of a warrant, issue a summons commanding the accused to appear before the Court at a stated time and place and answer to the charge.

1. The summons shall contain the same information as a warrant.

2. The summons shall state that if a defendant fails to appear in response to a summons, a warrant for his/her arrest shall be issued.

3. The summons shall be served upon the defendant by delivering a copy to the defendant personally. Service shall be made by an

authorized law enforcement officer/court personnel, who shall make a return of service which shall be filed with the records of the case.

C. *Arrest Warrants.* Judges shall have authority to issue warrants to arrest if they find that there is probable cause to believe that an offense against Tribal law has been committed by the named accused, based on sworn written statements or sworn oral testimony, or if a summons cannot be served or is ignored.

1. The arrest warrant shall contain the following information:

a. Name or description and address, if known, of the person to be arrested.

b. Date of issuance of the warrant.

c. Description of the offense charged.

d. Signature of the issuing judge,

and a copy of the complaint shall be attached to the arrest warrant.

2. Reservation police officers shall make every effort to execute arrest warrants in a timely manner. The chief law enforcement officer of the Reservation, or designee, shall acknowledge receipt of arrest warrants issued by the Court by returning an acknowledged copy to the Court the same day of receipt, and maintain the original warrant in the manner required by Reservation law enforcement policy. The original warrant shall be returned to the Court upon execution. Once every 60 days,

the chief law enforcement officer shall provide a list of active warrants to the Court Clerk.

3. The warrant shall be executed by the arrest of the defendant by a law enforcement officer taking the defendant into custody. The officer shall have the warrant, or a facsimile copy, 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. A copy of the complaint shall also be served on the defendant with the warrant.

4. A warrant for arrest will be valid only within the jurisdiction of the Court, unless it is used in conformance with the extradition procedures set forth in this Code.

5. An arrest may be made at any time of the day or night.

D. *Citations.* The Reservation's chief law enforcement officer and the Judges of the Trial Court have the authority to develop and implement a citation procedure where arrests made by police officers for some crimes can be processed to conclusion with citations only. Such citations may only be used for Class B and C offenses.

#### **Rule 4. Extradition**

A. *Definitions.*

1. *Fugitive from justice* means any Indian who has fled to the Reservation and is charged by a state with a crime committed within the jurisdiction of the state but outside of Indian country, or is charged by an

Indian tribe with an offense committed in Indian country.

2. *Demanding jurisdiction* means the state or tribal nation from which the fugitive from justice fled, or the authorized agent of such state or tribe, including prosecutors and court officials.

B. *Trial Court to issue warrant.* Whenever a demanding jurisdiction requests a fugitive from justice and produces a copy of the indictment found, or complaint and warrant, or other judicial evidence, charging any Indian with having committed a crime within the jurisdiction of the demanding jurisdiction, the Tribal Prosecutor may apply to the Trial Court to issue an arrest warrant for the apprehension and commitment of the Indian so charged within 72 hours of issuance, to the end that such Indian may be brought before the Tribal Court for hearing and determination of the issues set forth in subsection D.

C. *Notice of hearing; waiver of hearing.* As soon as possible after the apprehension of the accused Indian, and in any event within twenty four (24) hours, the Trial Court shall fix a date for a removal hearing on the issues defined in Rule 4.D unless the accused has waived the right to a hearing in writing. The hearing date shall be not more than two (2) weeks after the date of apprehension of the accused, unless the accused is in custody at the time the demand is received. At the same time, the Trial Court shall:

1. In open Court and on the record advise the accused Indian of his/her rights to present evidence and testimony at the removal hearing on the issues defined in subsection D, furnish the accused Indian with a



copy of this Rule calling particular attention to subsection E defining the issues to be heard, and advise the Indian that the Indian may voluntarily waive the hearing and agree to be delivered to the demanding jurisdiction; and

2. Immediately notify the demanding jurisdiction of the date of the hearing by telephone if necessary, require the demanding jurisdiction's attendance at the hearing, furnish the demanding jurisdiction with a copy of this Rule calling particular attention to subsection D defining the issues to be heard, and advise the demanding jurisdiction of its right to present evidence and testimony.

D. *Removal hearing; issues to be determined.* At the hearing as provided in subsection C the Trial Court shall hear and determine the following issues:

1. Whether the accused Indian is the person before the court and is the person charged by the demanding jurisdiction with the commission of a crime.

2. Whether there is evidence of criminality. For purposes of this subsection, criminality is established if evidence is found sufficient to justify commitment for trial if the crime had been committed on the Reservation. Evidence need not be such as is required to convict an accused at a trial. The Trial Court shall not determine guilt or innocence.

3. Whether, under all the facts and circumstances, justice would best

be served by delivering the Indian to the demanding jurisdiction.

E. *Entry of judgment.* If the accused Indian waives in writing the right to a hearing, or if the issues defined in subsection D hereof are resolved against the accused Indian, the Trial Court shall enter a judgment authorizing the demanding jurisdiction to arrest and remove the accused Indian from the Reservation.

## **Rule 5. Arrest Procedures**

A. *Notification of Rights at Time of Arrest.* Upon arrest the suspect shall be advised immediately of the following rights:

1. That he/she has the right to remain silent.

2. That any statements made by him/her may be used against him/her in court.

3. That he/she has the right to obtain counsel at his/her own expense.

## **Rule 6. Search and Seizure**

A. *Search Warrant.* A search warrant is a written order, signed by a tribal judge, directing a law enforcement officer to conduct a search and seize property specified in the warrant.

1. A warrant shall describe with particularity the person, property or place to be searched and shall describe the property to be seized.

2. A search warrant shall be issued only by a judge and only upon probable cause that a search will discover:

a. Stolen, embezzled,  
contraband or otherwise

unlawfully possessed property;

- b. Property which has been or is being used to commit a criminal offense; or
- c. Property which constitutes evidence of the commission of a criminal offense. Such probable cause shall be supported by a sworn written statement or sworn oral testimony.

3. The Chief Trial Judge will designate one Judge to be contacted for search warrants when the Court is not in session. A judge may approve a search warrant via telephone after hearing the officer's sworn testimony of probable cause. The law enforcement officer may annotate the written warrant with the time and date of telephonic approval and the name of the approving Judge but may not sign the warrant for the Judge. Telephonic search warrants so annotated shall be valid even if lacking the Judge's signature at the time of execution.

4. Warrants shall be served only by authorized law enforcement officers.

5. The executing officer shall return the warrant to the Court within the time limit shown on the face of the warrant, which in no case shall be longer than ten (10) days from the date of issuance. Warrants not returned within such time limits shall be void. The warrant shall be served between 7:00 a.m. and 11:00 p.m.,

unless the Judge, upon a showing of good cause, inserts a direction that it be served at some other time.

B. The officer serving and executing a warrant shall leave a copy of the warrant and an inventory of all property seized with every person from whom property is seized. *Search Without a Warrant.* No law enforcement officer shall conduct any search without a valid warrant except:

1. When he/she is making a lawful arrest; or

2. With the voluntary consent of the person being searched or the person entitled to possession of property being searched; or

3. When the search is of a moving vehicle and the officer has probable cause to believe that it contains contraband, stolen property, or property otherwise unlawfully possessed, except that the odor of marijuana or presence of marijuana packaging shall not constitute probable cause to search a moving vehicle except in the case of a suspected DUI; or

4. The officer has probable cause to believe that the person has in his possession contraband or fruits of a crime, and taking the time to get a search warrant would endanger the officer's life, or seriously risk the destruction of the evidence, except that the odor of marijuana shall not constitute probable cause to search an individual.

C. *Exclusion of Unlawfully Obtained Evidence.* The Court shall prohibit the introduction or use at trial of any evidence

seized in a search conducted in violation of subsection B or C and may, in addition, recommend to the chief law enforcement officer of the Reservation any appropriate disciplinary actions against the law enforcement officer conducting the unlawful search.

D. *Disposition of Seized Property.* A hearing shall be held by the Court to determine the disposition of all property seized by the police. Upon satisfactory proof of ownership, the property shall be delivered immediately to the owner, unless the property is contraband or is to be used as evidence in a pending case. Property seized as evidence may be returned to the owner after final judgment. Property confiscated as contraband shall be destroyed or otherwise lawfully disposed of as ordered by the Court. Currency determined to be contraband shall be deposited into the Court's fund.

## **Rule 7. Arraignment**

A. Arraignment is the bringing of an accused before the Court, informing him/her of his/her rights and of the charges against him/her, receiving his/her plea, and setting conditions of pre-trial release as appropriate in accordance with this Code.

B. Arraignment shall be held in open Court without unnecessary delay after the accused is taken into custody and in no instance shall arraignment be later than the next day that the Court is in regular session or 72 hours, whichever occurs first.

1. The accused shall not be in custody longer than 72 hours without a probable-cause determination if arrest occurred without a warrant.

2. The Court may, in its discretion, provide for temporary

commitment of persons who, for reasons beyond their control, are unable to appear in Court within the time period provided in Rule 7.B. For persons accused of a Class B or C offense, the Court may, in its discretion, instead issue a citation or summons for the accused's appearance at the next regularly scheduled arraignment session of the Court.

3. The 72-hour period described in this Rule shall not begin until the end of any temporary intoxication hold as set forth in Rule 9.D.1 and mandatory hold as set forth under Section 7.4.37.I ends.

C. Before an accused is required to plead to any criminal charges, the judge shall:

1. Advise the accused that he/she has the right:

a. To remain silent, and that any statement he/she makes either to the Judge or anyone else concerning the offense charged, can be used against him/her in that proceeding or in any future prosecution,

b. To have a trial where he/she has had sufficient time to prepare his/her defense if he/she pleads "not guilty", including the right to compel witnesses to testify, and to confront and cross-examine the witnesses against her/him,

c. That he/she has a right to testify or to not testify since he/she has a right not to be

compelled to incriminate him/herself;

d. To be tried by a jury if the offense charged is punishable by imprisonment, and

e. To be represented by counsel at his/her expense, before he/she pleads to the charge.

2. Read the complaint to the accused and provide the accused with a copy of the complaint if he/she has not received one.

3. Explain the substance of the charges, determine that he/she understands the complaint and the section of the Tribal Code which he/she is charged with violating, including the maximum authorized penalty.

4. If the arrest was without a warrant, and the defendant is to remain in custody, the judge shall also determine during arraignment whether there is probable cause to believe that an offense against Tribal law has been committed by the named accused.

5. If the defendant requests counsel, arraignment will be postponed until he/she has had time to confer with counsel. Postponement shall be until the next scheduled arraignment session, or a date specified by the Judge.

B. The Judge shall call upon the defendant to plead to the charge:

1. If the accused pleads “not guilty” to the charge, the judge shall then set a pretrial date and may consider conditions for release prior to further court proceedings.

2. If the accused pleads “guilty” to the charge, the judge shall accept the plea only if the judge is satisfied that the plea is made voluntarily and the accused understands the consequences of the plea, including the rights which he/she is waiving by the plea and that if he/she pleads guilty, there will not be a trial. The judge may then impose sentence or defer sentencing for a reasonable time in order to obtain any information the judge deems necessary for the imposition of a just sentence. The accused shall be afforded an opportunity to be heard by the Court prior to sentencing. The accused will be eligible for bail if sentencing is deferred to a future date or if no bail, may be credited for time served until sentencing when sentenced.

3. If the accused refuses to plead, the judge shall enter a plea of “not guilty” on his/her behalf.

C. *Use of Two-Way Electronic Audio-Video Communication.* A defendant’s initial appearance for a probable-cause determination or arraignment before a judge may, in the discretion of the Court, be satisfied either by the defendant’s physical appearance before the court or by two-way electronic audio-video communication, if available. The audio-video communication must operate so that the defendant and the judge can see each other simultaneously and converse with each other and so that the

defendant and his counsel, if any, can communicate privately. A judge may order a defendant's physical appearance in court for an initial appearance or arraignment.

#### **Rule 8. Commitment**

A. No person shall be detained or jailed under this Code for a longer period than 72 hours unless a commitment order bearing the signature of a Trial Court Judge is issued authorizing the commitment. The detention facility shall promptly notify the Court of any person who has been detained at least 48 hours without a commitment order.

1. Pending investigation of charges or pending trial, or under Rule 7.B.2, a temporary commitment order shall be issued.

2. A final commitment order shall be issued for persons jailed as a result of a sentence of the Trial Court.

B. *Notification of Escape or Release from Confinement.* When a person confined to an institution or jail pursuant to a commitment order issued by the Trial Court, for a criminal offense involving the use or threat of physical force or violence, escapes or is released, the Reservation's chief law enforcement officer or chief corrections officer, or designee, shall notify a victim of the offense who has requested notification in the event of an escape or a release of the person. The Reservation's chief law enforcement officer or chief corrections officer shall adopt a methodology for notifying law enforcement and a victim who has requested notification. Notification concerning a pending release must be made prior to the release.

#### **Rule 9. Bail; Release from Custody**

A. *Right to Bail.* Except as herein provided, all persons arrested for offenses under this Code and incarcerated shall be given the opportunity to make bail and be released pending their trial or appeal. A defendant may at arraignment request that any bail posted under the bail schedule in this Rule be reduced or that he be released without bail.

B. *Release By Judge Prior to Trial.* At arraignment or other appropriate time, the judge shall decide whether to release the defendant from custody pending trial. As conditions of release, the judge may, to assure the accused's appearance at all times:

1. Require the accused to deposit cash or a bail bond executed by two or more reliable persons as sureties subject to the Court's jurisdiction, in an amount specified by the judge not to exceed twice the maximum fine payable for the offense charged, which will tend to assure the appearance of the defendant at trial;

2. Require the accused, and/or any other designated person or organization satisfactory to the judge, to execute a written promise to appear or to deliver the accused at all required times;

3. Impose reasonable restrictions on the travel, association or place of residence of the accused;

4. Impose any other condition deemed reasonably necessary to assure the appearance of the accused as required.

5. The Judge may in his/her discretion release the defendant on

their own recognizance, if it appears substantially certain, considering all relevant factors, that the defendant will appear at all appointed times.

C. *Bail By Schedule.* Annually, the Chief Trial Judge will establish and post a schedule of bail for offenses when a defendant may obtain release from jail at any time prior to arraignment by posting the amount of bail specified in the bail schedule for the offense charged.

D. *Exceptions to Bail by Schedule.*

1. No defendant may be allowed to post bail per the schedule when the arresting officer, complaining witness(es), or the corrections officer certify that the defendant was, at the time of incarceration, unconscious, under the influence of a controlled or intoxicating substance or apparently so under the influence, or for any reason does not appear to be in a conscious and sober condition. Such defendant shall not be allowed to post bail for at least eight (8) hours after being brought to jail, or until a corrections officer determines that the defendant is in a conscious and sober condition, whichever is later.

2. A person may not be released on bail without first appearing before a judge when the offense is:

- a. Stalking;
- b. Partner and family member assault (domestic abuse);
- c. Violation of a Temporary Restraining Order, Temporary Order of

Protection, Order of Protection;

d. Sale of dangerous drugs;

e. Possession of dangerous drugs, except where the charge is a Class C offense;

f. Production or manufacture of dangerous drugs;

g. Unlawful sale of prescription medication;

h. Unlawful discharge of firearms;

i. A crime against a child or minor; or

j. Any person detained for violating conditions of release (probation or parole).

E. *Release Pending Appeal.* A convicted person may be released from custody pending appeal on such conditions as the judge determines will reasonably assure the appearance of the accused unless the judge determines that release of the accused is likely to pose a danger to the community, to himself/herself or to any other person.

F. *Denial or Revocation of Release.* The Court may revoke its release of the defendant or deny release of defendant, and order him/her committed, at any time where it determines that the conditions of release will not reasonably assure the appearance of the defendant, if release of the accused is likely to pose a danger to the community, to himself/herself or to any other person. or if any conditions of release have been violated.

G. *Violation of Release Condition - Forfeiture.*

1. If a defendant violates a condition of release, including failure to appear, the prosecutor may make a written motion to the Court for revocation of the order of release. A judge may issue a warrant for arrest of a defendant charged with violating a condition of release. Upon arrest, the defendant must be brought before a judge in accordance with Rule 5.B.1.

2. If a defendant fails to appear before a court as required and bail has been posted, the judge may declare the bail forfeited. Notice of the order of forfeiture must be mailed to the defendant, the person posting the cash bail bond for the defendant and the defendant's sureties at their last known address(es).

3. The surety bond must be exonerated upon proof of the defendant's death or incarceration or subjection to court-ordered treatment in a foreign jurisdiction.

4. If the defendant appears and the defendant posted the bond, the Court may order that the bond be converted to pay fines, fees, surcharges, or restitution on the case at hand. The Court does not need the defendant's consent to order the conversion.

5. If the defendant appears, the Court may order the bond be converted to fines, fees, surcharges, or restitution on the case at hand if the person who posted the bond, not the

defendant, agrees to the bond conversion.

6. The Court may order the forfeiture of bail for non-appearance set aside if appears that justice does not require the enforcement of the forfeiture.

**Rule 10. Pleas**

A. *Ensuring Guilty Plea is Voluntary.* The Judge shall not accept a guilty plea without first talking to the defendant personally in open Court to determine that the plea is voluntary and is not the result of force or threats, or of promises, apart from any plea arrangements entered into between the prosecutor and the defendant. The Judge must explain and determine that the defendant understands the rights, conditions, and waivers described in Rule 7.C. and 7.D.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.

B. *Determining Accuracy of Plea.* The Judge shall not enter judgment on a tendered plea of guilty without first inquiring, to the Judge's satisfaction, that there is a factual basis for the plea.

C. *Withdrawal of Guilty Plea.* The Court may, in its discretion, allow a defendant to withdraw a plea of guilty if it appears that the interest of justice and fairness would be served by doing so.

D. *Plea Agreement Procedure.*

1. The prosecutor and the defendant (or defendant's counsel, if applicable) 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 Prosecutor will do any of the following:

- a. a. Move for dismissal of other charges or all charges;
- b. Make a recommendation, or agree not to oppose defendant's request, for a particular sentence, with the understanding that such recommendation or request shall not be binding on the Judge; or
- c. Agree that a specific sentence is the appropriate disposition of the case.

2. The Judge shall not participate in any discussions, but if a plea or agreement has been reached, the Judge shall on the record require 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 opportunity to consider a presentence report if any has been made.

3. If the Judge accepts the plea agreement, the Judge shall, on the record, inform the defendant that the Judge will embody in the judgment and sentence the disposition provided for in the plea agreement.

4. If the Judge rejects the plea agreement, the Judge shall, on the

record, inform the defendant and the prosecutor of this fact, advise the defendant personally in open Court or on showing of good cause, in chambers, that the Court is not bound by the plea agreement, afford the defendant an opportunity to then withdraw the plea and advise the defendant that if he/she persists in the guilty plea, the disposition of the case may be less favorable to the defendant than contemplated by the plea agreement. [*As amended by Ord. DOI 3(98)*]

5. Except for good cause shown, the Judge shall be notified of the plea agreement at the time of arraignment or as soon thereafter as possible, but in all cases at least 20 days prior to trial.

6. Any evidence of a plea of guilty, later withdrawn, or of statements made in connection therewith, is not admissible in any other criminal proceeding or in any civil case against the defendant who made the plea or offer. However, evidence of a statement made in connection with or relevant to a plea of guilty, later withdrawn, or a plea of no contest to the offense charged or any other offense is admissible in, a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath and on the record, and in the presence of an advocate.



## **Rule 11. Joinder of Offenses and Defendants**

A. *Joinder of Offenses.* Two or more offenses may be charged in the same complaint and tried together if:

1. The offenses charged are the same;
2. Different offenses are charged but they arise out of the same act or transaction; or
3. All of the offenses charged are connected in a common scheme or plan.

B. *Joinder of Defendants.*

1. Two or more defendants may be charged in the same 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 provides such other relief as justice requires. In ruling on a motion for severance, the Court may order the prosecutor to deliver the Court for inspection in chambers, any statements made

by a defendant which the prosecutor intends to introduce in evidence at trial.

## **Rule 12. 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 defendants 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 counsel shall reveal by written notice to the Court and prosecutor 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 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 13. Motions and Hearings**

A. *Timing of Motions and Responses.*

1. An application to the Court for an order shall be by motion. A motion other than one made at trial or hearing shall be in writing unless the Court permits it to be made orally. It shall state the grounds upon which it is made and shall set forth the relief or order sought. It may be supported by

affidavit and/or memorandum of points and authorities.

2. All motions and supporting documents must be served on the other party at the same time they are filed with the Court.

3. The adverse party shall have ten (10) calendar days after receipt of the motion and supporting documents to file and serve a response brief.

4. Upon the filing of the response brief, or upon the eleventh (11th) day after the filing of the motion if no response brief is filed, the motion shall be deemed made and submitted, and taken under advisement by the Court, or the Court may set the motion for a hearing if the Court believes a hearing would be beneficial to resolving the motion.

5. The Court may, in its own discretion, proceed to decide a motion without a hearing and issue a written decision.

6. Failure to file briefs within the prescribed time may subject any motion to summary ruling.

B. Motions raising defenses and objections may be made as follows:

1. Any defense or objections which are capable of determination other than at trial should be raised by motion before the status conference (Rule 18.E).

2. Defenses and objections based on defects in the institution of the prosecution of the complaint, other than lack of jurisdiction or failure to charge an offense under this

Code, must be raised on motion prior to the status conference. Failure to raise these defenses by motion before the status conference shall result in waiver, unless the Court for good cause shown grants relief from such waiver.

3. Lack of jurisdiction or failure to charge an offense may be raised as defenses or noticed by the Court on its own at any stage of proceeding. Motions raising lack of jurisdiction or failure to charge an offense shall be made in writing and filed with the Court so that all briefing will be complete before the day set for the status conference, or per any other schedule ordered by the Court. Such motions will be argued before the date of trial unless the Court directs otherwise. Decision on such motions shall be made by the Judge and not by the jury.

4. Motions filed after the status conference require the Court's leave to be accepted by the Clerk. Leave shall be granted for good cause, such as new evidence or intervening events. Motions filed after the status conference without leave of Court shall be rejected by the Clerk.

5. If a motion is decided against a defendant, the trial shall proceed as if no motion were made. If a motion is decided in favor of a defendant, the Judge shall alter the proceedings or enter judgment as is appropriate in light of the decision.

#### **Rule 14. 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, then the Court may, on the defendant's motion or its own motion, dismiss the complaint with or without prejudice.

#### **Rule 15. 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 the Rules of Civil Procedure in this Code.

B. All papers required to be served shall also be filed with the Court.

C. All papers presented for filing must include the case number, applicable filing fee, must be typewritten with no visible alterations, must be notarized if not signed in the Clerk's presence, and include the certificate of service to the opposing party. Inmate motions may be legibly handwritten and submitted according to rules and procedures prescribed by the Court.

D. The Court may prescribe other rules for filing and formatting of papers as it deems necessary.

#### **Rule 16. Subpoena**

A. *Issuance of Subpoenas.*

1. Upon request of the defendant, the prosecutor or upon the Court's own initiative, the Court shall issue subpoenas to compel the testimony of witnesses, or the production of books, records, documents or any other physical evidence relevant to the

determination of the case and not an undue burden on the person possessing the evidence.

2. An employee of the Court may act on behalf of the Court and issue subpoenas which are to be served within the territorial jurisdiction of the Court.

3. A subpoena shall bear the signature of a Judge or Clerk of the Court and it shall state the name of the Court, the name of the person or description of the physical evidence to be subpoenaed, the title of the proceeding, and the time and place where the witness is to appear or the evidence is to be produced.

B. *Service of Subpoenas.*

1. A subpoena may be served at any place within or without the confines of the Reservation.

2. A subpoena may be served by any law enforcement officer, Court employee, or other person over the age of 18 years who is not a party. Service of a subpoena shall be made by delivering a copy of it to the person named or by leaving a copy at his/her usual place of residence or business with any person of suitable age and discretion who also resides or works there.

3. Proof of service of the subpoena shall be filed with the Court by noting on the back of a copy of the subpoena the date, time and place that it is served and noting the name of the person to whom it was delivered. Proof of service shall be signed by the

person who actually served the subpoena.

C. *Failure to Obey Subpoena.* In the absence of a justification satisfactory to the Court, a person who fails to obey a subpoena may be deemed to be in contempt of court and prosecution thereof may proceed upon order of the Court under Code Section 7.9.12 (criminal contempt) and Rule 43. No contempt shall be prosecuted unless a return of service notice has been filed with the Court under Rule 16.B.3.

#### **Rule 17. Assignment of Cases for Trial**

A. The Chief Trial Judge and Court Clerk shall provide for the placing of criminal of criminal proceedings on the Court calendar with as little delay as is reasonably possible.

B. The Court may, for good cause shown by either party, direct that a trial be continued to the next or some succeeding month. However, if the prosecution, for good cause shown, requests and is granted a delay, and if the defendant is incarcerated not having made bail, the defendant shall be released on his own recognizance pending the rescheduled trial unless prohibited by these Rules, this Code or an order of the Court. The Court shall have discretion to order that the defendant's incarceration continue pending the rescheduled as set forth in Rule 9.F.

#### **Rule 18. Pre-Trial Conferences**

A. A pre-trial conference shall be held within 25 days after arraignment, or any other time before trial in the Court's discretion, in order to determine the matters necessary for proceeding to trial.

B. The defendant or their counsel, if applicable, and the prosecutor are required to attend. Failure to appear at a scheduled pre-

trial conference may result in a charge of contempt. Other persons may attend with the advance consent of the Judge conducting the pre-trial conference only if their presence will further the purpose in Rule 18.A.

C. 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 status conference 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. The Order and Memorandum of Pre-Trial Conference shall include:

1. The status conference date.
2. Motions and plea-agreement deadline(s), so that all briefing and hearing(s) on motions and review of all plea agreements and/or plea changes will be completed before the status conference (Rule 13.B) but no later than 20 days before trial.
3. Whether or not a jury will be called.
4. Deadline to provide a list of witnesses to be subpoenaed.
5. Agreement, orders and deadlines regarding depositions and discovery.

This Order shall supersede the pleadings for the purpose of framing issues for discovery and trial.

E. *Status Conference*. The Court shall hold a status conference after discovery and motions are complete for the purpose of setting the trial date and determining the issues to be resolved at trial. The Court may issue written order(s) after the status conference setting forth any points of law, fact and/or procedure that have been resolved by agreement or on motions, and setting forth any issues to be resolved at trial and/or procedures to be observed at trial.

### CHAPTER 3: TRIAL PROCEDURES

#### SECTIONS

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#### Rule 19. Rights of Defendant in Criminal Cases

- A. No person shall
1. twice be put in jeopardy for the same offense, or
  2. be compelled in any criminal case to be a witness against himself/herself. The defendant's refusal or failure to testify shall not be construed against the defendant or commented upon by the prosecution.
- B. The accused shall have the right to

1. Be present throughout the proceeding and to defend him/herself in person;
2. Assistance of counsel at his/her own expense;
3. Be informed of the nature and cause of the charge, and to receive a copy of the complaint;
4. Compulsory process to obtain the testimony of witnesses and other evidence in his/her defense;
5. Be confronted with witnesses against him/her;
6. A speedy and public trial; and
7. Demand trial by an impartial jury if the offense, or combination of offenses, charged is punishable by imprisonment.

#### Rule 20. Speedy Trial

##### A. *Priorities*

1. The trial of criminal cases shall have priority over the trial of civil cases.
2. The trial of defendants in custody and defendants whose pretrial liberty may present unusual risks shall be given preference over other criminal cases.
3. *Duty of Prosecutor*. The prosecutor shall advise the Court of facts relevant to determining the order of cases on the calendar.

##### B. *Time Limits*

1. *All Defendants*. Every person against whom a complaint has been filed should be tried within 220 calendar days of his or her

arraignment, or as soon thereafter as the Court may schedule a trial but in any case no later than 365 calendar days after his or her arraignment.

2. *Defendants in Custody.* If a defendant is in custody, he or she shall be tried within 180 calendar days of his or her arraignment or the date on which defendant entered a “not guilty” plea, or be released on their own recognizance with conditions set by the Court.

3. If a defendant is released from custody within 100 calendar days of his or her arraignment, the speedy trial limit in Rule 20.B.1. shall apply.

4. *New Trial.* A trial ordered after a mistrial, upon a motion for a new trial or upon the reversal of a judgment on appeal, shall begin within 90 calendar days of the entry of the order of the Court of Appeals.

5. *Calculation of Time Limits.* The calculation of the time limits prescribed by this Rule shall not include any delay caused by or on behalf of the defendant, including, but not limited to, continuances requested by the defendant, time required to hear and adjudicate any motions filed by or on behalf of the defendant, delays caused by an examination and hearing to determine competency, the defendant’s failure to attend court hearings, or his or her absence from the Reservation for any reason.

6. *Waiver.* A defendant or his or her counsel shall be deemed to have waived his or her right to a speedy

trial by doing or failing to do any of the following:

a. Failing to appear at any Court appearance;

b. Any continuance requested by defendant or defense counsel;

c. Any motion filed by or on behalf of the defendant, but only for the amount of time required to calendar, hear and adjudicate the motion; and

d. Agreement by the parties to set a case for trial outside of the speedy trial limits, but only for such time as the trial date set exceeds those limits.

C. *Denial of Speedy Trial; Dismissal.* If the Court determines that a speedy trial time limit established under this Rule has been violated, it may, on motion of the defendant or on its own initiative, dismiss the prosecution without prejudice.

## **Rule 21. Trial by Jury**

A. *Right to Jury Trial.* Nothing in this Title or these Rules shall be construed to obstruct or deny the right of a defendant subject to imprisonment to have a trial by jury, except when the sole charge is the offense of criminal contempt.

1. Unless a trial by jury is specifically requested by a defendant, all criminal actions shall be tried by the Court.

2. If a defendant in a criminal proceeding desires to be tried by a jury, he/she must either request a jury trial at arraignment, or file a written

request for trial by no later than the pre-trial conference.

3. A defendant waives his/her right to a jury trial if the defendant fails to appear at the scheduled jury trial. Waiver of the jury trial will result, without delay, in a bench trial by the Court in absentia for misdemeanor charges and a scheduled bench trial for Class A, B or C charges.

B. *Jurors.* A jury shall consist of at least 6 members of the Reservation community selected at random from a list of eligible jurors prepared each year by the Court.

1. *Eligible juror* means a Reservation resident who is an enrolled member of any federally-recognized Indian tribe, who has reached the age of 18 years, is of sound mind and discretion, has not been convicted of a felony or misdemeanor under this Code within the past year, is not a judge or justice, officer or employee of the Court or an employee of the Reservation law enforcement program(s) (uniformed police, dispatch, criminal investigations, corrections or their support staff), and is not otherwise disqualified according to standards established by the Court.

2. Any person receiving a jury subpoena who believes that they are not an eligible juror shall have the burden of presenting documentation to the Clerk demonstrating lack of eligibility.

3. A list of at least 75 resident Indian persons who are eligible for

jury duty shall be prepared and maintained by the Court Clerk.

4. Under the supervision of the presiding judge, a panel of jurors shall be drawn by lot or other means of random selection, from the jury list. A trial jury shall consist of 6 qualified jurors selected from a panel of 13 eligible persons taken from the jury list, none of whom has an interest in the case, or is related as spouse, parent, brother or sister or other immediate relative to any of the parties or their counsel. If the jury panel is exhausted before a sufficient number of jurors are selected for the trial jury, additional jurors shall be drawn by lot from the jury list for the panel until a trial jury is selected.

5. The judges of the Court shall have the power to issue subpoenas, through regular mail, to compel the attendance of members of the jury panel and of trial jurors. Subpoenas shall be signed by the judge issuing them or a Court Clerk.

6. The judge assigned to the case shall have the power to excuse persons from jury duty on account of sickness, disability or other good cause.

7. Each party may question members of the panel of prospective jurors for the purpose of selecting a trial jury. The Court may itself examine jurors.

8. Either party may challenge a juror for cause. Challenges for cause shall be made against a potential juror on the grounds that he/she is not

entitled or qualified to be a juror, he/she 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.

9. In criminal cases, in addition to disqualifying jurors for cause as determined by the judge, the prosecution and the defendant, each side shall be entitled to 2 peremptory challenges without assigning any cause. Where there is more than one defendant, they must join in a challenge before it can be made unless the Court, for due cause shown, shall permit otherwise, or shall permit each defendant to exercise 1 peremptory challenge.

10. Each member of the jury panel called to service and each juror who serves upon a jury shall be entitled to receive such fees for daily services and/or mileage, if any, as established by a rule of the Court.

11. If, after the proceedings begin and before a verdict is reached, a juror becomes unable or disqualified to perform, the parties may agree to complete the action with the remaining jurors. If no agreement can be reached or if justice otherwise requires, the Judge shall order a temporary delay in trial for such time as is necessary to impanel a new jury.

12. 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.

13. *Jury Instructions.* The judge shall instruct the jury orally with regard to the applicable law and the jury shall decide all questions of fact on the basis of that law. At the close of evidence, or earlier in the trial as the judge directs, any party may file with the judge written jury instructions on the law that the party wishes to be delivered to the jury by the judge. At the same time copies of such proposed instructions shall be furnished to the opposing party. Prior to closing arguments, the judge shall determine which, if any, proposed instructions shall be orally delivered to the jury at the close of arguments. No party may assign as error any portion of the jury instructions unless he/she makes his/her objection and reasons for it before the jury retires to consider its verdict. Opportunity shall be given to make the objection out of the hearing of the jury.

14. 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.



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

- a. The Court's instructions
- b. Papers or things received in evidence as exhibits
- c. Notes taken by the jurors themselves.

16. After deliberation in private, the jury in criminal cases shall return to the judge in open court a verdict of "Guilty" or "Not Guilty" with respect to each defendant. A verdict in criminal cases shall be rendered by a majority vote of the jury unless the crime is punishable by six months or more imprisonment, in which case the verdict must be by unanimous vote of the jury.

#### **Rule 22. Trial by Judge**

A. In cases tried without a jury, the Judge shall make a general finding of "guilty" or "not guilty," and shall, upon request of any party, make specific findings of law and/or fact which may be in the form of a written decision.

B. If a defendant fails to appear at the scheduled bench trial, the Court may issue a bench warrant, revoke any conditions of release, reschedule for the next available bench trial date, or take other steps within the Court's authority and discretion to ensure justice is served.

#### **Rule 23. Affidavit of Bias and Prejudice of a Judge, Judge Disability**

Upon the filing of an affidavit of bias and prejudice setting forth satisfactory proof of

facts establishing, that by reasons of bias or prejudice of the Judge to whom the case is assigned, the defendant cannot have a fair trial, the Judge shall disqualify him/herself. Any person who abuses this process by filing such affidavit(s) without basis in fact shall be in contempt of Court.

#### **Rule 24. Proceedings at Trial**

A. The time and place of court sessions, the order of proceedings and all other details of trial procedure not prescribed in these Rules may be set out in separate rules or orders of the Court.

B. In any case where a sentence of imprisonment is possible, the defendant shall be present in court at every stage of the trial, including impaneling the jury, return of the verdict, and imposition of sentence.

C. At any time in the trial process, the judge may appoint an interpreter of his/her own selection and may fix the reasonable compensation of such interpreter. An interpreter through whom testimony is communicated shall be put under oath to faithfully and accurately translate and communicate as required by the judge. The judge or Clerk may act as interpreter with the consent of all parties.

D. The Judge shall open proceedings, read the case number and describe the nature of the complaint, and state the defendant's plea.

E. The Court may accept pretrial motions for ruling by the Court provided such motions are not otherwise prohibited or untimely under these Rules, or any rule or order of the Court. All arguments on such motions shall be made outside the hearing of the jury in a trial by jury.

F. Each party, or their counsel if applicable, shall be entitled to make a brief opening statement. The prosecutor shall make his/her opening statement first, followed by the defense. The prosecutor may waive an opening statement. The defense may waive an opening statement or reserve the right to make an opening statement after the prosecution has rested its case.

G. Testimony of witnesses shall be given orally under oath in open court and subject to the right of cross-examination. Documentary and tangible evidence shall also be received in open court and available to the defendant. 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.

H. All records relating to statements or confessions of the defendant, or reports of physical, mental, or other scientific tests or examinations relating to or performed on the defendant, when in the possession or control of the prosecution, shall be open to inspection and copying by the defendant.

I. The defendant is presumed to be innocent. The prosecution has the burden of proving the defendant's guilt beyond a reasonable doubt, including the facts that a crime has actually been committed, and that the defendant committed it with the requisite intent, when intent is an element of the offense.

J. The prosecution shall present its case first, followed by the case of the defendant. If redirect or rebuttal is required, the prosecution shall proceed first, followed by the defendant at the Court's discretion.

K. The defendant may make a motion for judgment of not guilty or directed verdict acquittal at the close of the prosecution's case. 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.

L. 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.

M. At the conclusion of the evidence, the prosecution and defendant each in turn shall summarize the proof and make final argument, with the prosecution having the right of final rebuttal in the Court's discretion. The parties may offer rebuttal 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.

N. The prosecution and the defense may present closing arguments in the case, the prosecution having the right to give the final closing.

O. After closing arguments, the judge shall orally deliver instructions to the jury, including any instructions proposed by parties under Rule 21.B.13.

P. In every case, the judge shall instruct the jury that the defendant is presumed to be innocent, that the burden of proof rests on the prosecution, that the evidence must show beyond a reasonable doubt that the defendant has committed the crime charged, and that if the defendant did not testify, his silence shall

not be considered as evidence that the defendant is guilty.

### **Rule 25. Rules of Evidence**

The Northern Cheyenne Rules of Evidence set forth in Title 6 of this Code shall be followed in all Tribal Court criminal proceedings.

### **Rule 26. Expert Witnesses**

A. Either party may call expert witnesses of the party's own selection, and the calling party shall bear the cost of their own expert witness(es).

B. Lab technicians of a state or federal Crime Lab may telephonically testify in trial as to their personal findings relevant to the case at hand, in the Court's discretion and for good cause.

### **Rule 27. Verdict**

A. Upon completion of the closing arguments, and after receipt of any instructions, the judge or jury, as the case may be, shall render its verdict.

B. *Verdict by Judge.* The judge shall render a verdict of guilty if he/she believes the defendant to be guilty of the offense(s) charged beyond a reasonable doubt. The judge shall have the option of rendering a verdict immediately after closing arguments or taking the case under advisement and issuing a ruling at a later time.

C. *Verdict by Jury.* A guilty verdict shall be returned in a jury trial only when a majority of the jurors finds that the defendant is guilty of the offense(s) charged beyond a reasonable doubt.

D. *Mistrial.* If, after repeated efforts, the 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.

E. *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.

F. *Lesser Included Offense.* The judge or jury may find the defendant(s) guilty of a lesser included offense instead of the offense he/she 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.

G. *Not Guilty Verdict.* 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.

H. *Guilty Verdict.* 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 28. Motions at Trial**

A. Either party may make motions throughout the course of the trial, any of which shall be oral unless otherwise directed by the presiding judge. Both parties shall have the opportunity to state their respective positions on any motion made. The motions which can be made shall include but are not limited to those listed in this Rule.

B. *Motion for Exclusion of Witnesses.* A motion to exclude witnesses who have not yet testified may be made by either party or by the Court on its own initiative prior to the time any witness has testified to ensure that the testimony of the witness is the witness's own independent recollection of the facts. Granting or denying any such motion is committed to the Court's discretion.

C. *Motion to Exclude Evidence.* A motion to exclude evidence may be made during the course of a trial when an opposing party introduces evidence that is inadmissible under these Rules or the applicable Rules of Evidence.

D. *Motion for Judicial Notice.* Either party may, during the presentation of its case, move the Court to take judicial notice of matters which by their nature are not properly the subject of testimony of which are universally regarded as established by common knowledge. Granting or denying any such motion is committed to the Court's discretion.

E. *Motion for Mistrial.* A motion for a mistrial can be made at any time during the trial and can be granted in the Court's discretion. A party may make such motion when any action by any person has the effect of prejudicing the outcome of the trial to the point that such prejudice could only be overcome by holding a new trial.

F. *Motion for a New Trial.* The defendant may make move for a new trial after a guilty verdict has been rendered against the defendant. The motion must specifically allege the errors made by the Court during the trial which form the basis for the motion. The motion shall be granted or denied as justice dictates.

G. *Motion for a Directed Verdict.* At the close of the prosecution's case, the defense may move that the Court direct a verdict of not guilty. Defendant's motion shall be granted only if the prosecution has failed to present a *prima facie* case. 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 directed verdict of guilty can be made if the Court finds as a matter of law that no adequate defense was presented.

## CHAPTER 4: POST-TRIAL PROCEEDINGS

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### Rule 29. Judgments

A judgment of guilty shall set forth the plea, the verdict or findings, the adjudication, and sentence when imposed. If defendant is found guilty or for any other reason is entitled to be discharged, judgment shall be entered immediately, and the defendant released. All judgments shall be signed by the presiding judge and entered into the record by the Court Clerk.

### **Rule 30. Sentencing**

A. Any person who has been convicted of an offense enumerated in this Code shall be sentenced by the Court without unreasonable delay.

B. 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/her punishment.

C. A motion to withdraw a plea of guilty shall be made only before the defendant is sentenced. However, to correct manifest injustice, the Judge may set aside the judgment of guilty and permit the defendant to withdraw his plea.

### **Rule 31. Kinds of Punishments**

A. All persons convicted of any offense by the Court may be sentenced to imprisonment, fine, assessment of court costs, or a combination of these punishments as set forth in this Code.

B. *Imprisonment.* On any sentence of imprisonment, credit shall be given for all time spent in custody in an institution as a result of the charge for which the sentence was imposed. Imprisonment may include commitment to an appropriate institution or program, either on or off the Reservation, for care, treatment, evaluation, or rehabilitation of the offender. Jurisdiction over a person sentenced to a program or institution off the Reservation shall be absolutely retained by the Court.

C. *Fines.* A money fine in an amount not to exceed the maximum permitted by this

Code provision defining the offense, which shall not exceed \$5,000 per offense or \$15,000 per offense when authorized by Federal law.

1. If the Court determines that a convicted offender is unable to pay forthwith a money fine assessed or costs assessed by the Court, the Court shall allow him/her a reasonable period of time to pay the entire sum or allow him/her to make installment payments to the Court Clerk at specified intervals until the entire sum is paid, over a period not to exceed nine (9) months.

2. If the offender defaults on such payments, the Court may find him/her in contempt of court and punish him/her accordingly, but no person shall be held in contempt of court where nonpayment is because of indigency.

3. Methods available for collecting a civil judgment shall be available to the Court Clerk to collect any unpaid money upon order of the Court following a failure to make any required payment.

4. The Court may, by rule or order, allow offenders to serve time in prison or receive credit for time served as a way of paying fines and costs. The Court shall annually set such stay-to-pay rates by rule, subject to ratification by the Tribal Council.

D. *Sex Offenders with Children.* Parents, guardians, and custodians of a child who are convicted of rape, sexual assault, sexual exploitation, physical abuse, neglect, or abandonment of that child may be ordered to

seek such therapy, treatment, or instruction as will assist in preventing recurrence of the conduct that formed the basis of the offense. Such treatment or therapy may be ordered in lieu of incarceration, with the proviso that if the offender fails to seek the therapy or treatment as ordered, the sentence of incarceration shall be reinstated.

E. *Restitution.* In addition to or in lieu of the penalties provided above, the Court may require a convicted offender who has inflicted injury upon the person or property of another to make restitution or compensation to the injured person by means of the surrender of property, payment of money damages, or the performance of any other act, including appropriate work detail, for the benefit of the injured party, within reasonable limits.

1. To require restitution and to fix the amount of all damages, the Court shall begin with a presumption that the defendant is responsible for all damages resulting from or occurring during defendant's commission of the offense.

2. The Court shall hold a hearing to receive evidence as to the amount of the damage incurred, and to receive the defendant's rebutting evidence, if any. If the injured party desires, restitution from the defendant shall be rendered to the Court, and then given to the injured party, to avoid contact between the two parties.

F. *Work In Lieu of Sentence.* In its discretion, the Court may commute or suspend some or all of the sentence imposing a fine or imprisonment, or grant probation, on condition that the convicted person does work for the benefit of the Tribe. A person

unable or unwilling to work may be confined in jail or fined as provided above.

G. *Commitment to Rehabilitation Program.* The Court may, as part of a sentence, require a defendant convicted of an offense involving a controlled or intoxicating substance, or a defendant whose use of such substance, in the Court's determination, is of a character and/or duration as to inhibit the defendant's rehabilitation, to a rehabilitation program or facility recognized by the Court.

H. *Forfeiture of Weapons.* Any person owning and using a firearm, or any sharp or dangerous weapon, in the commission of an offense shall forfeit such weapon to the Tribes as part of the sentence as provided in Title 7 of this Code. Upon order of the Court, such weapon shall be destroyed, or sold a public sale after appropriate public notice, pursuant to the direction of the Court.

I. *Factors in Determining Punishments.* In determining the character and duration of the sentence to be imposed, the Court shall take into consideration:

1. Customary punishments for similar offenses under Tribal traditions

2. The previous record and conduct of the defendant

3. The circumstances under which the offense was committed

4. Whether the offense was malicious or willful

5. Whether the defendant has attempted to make amends, restitution and/or paid damages, and shall give due consideration to the extent of the defendant's financial resources and the needs of his/her dependents

6. Any other such factor allowable at law that the Judge finds appropriate to consider.

Upon conviction, the Judge may require the prosecution to present evidence as necessary on the above factors in open Court, with the defendant present and allowed to offer rebuttal and to cross-examine all witnesses.

### **Rule 32. Habitual Offenders**

Except as otherwise provided in Title 7 of this Code, any person convicted three (3) times for the same offense in one year, or five (5) times for any Class A or Class B offense in one year, 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 33. New Trial**

The Court, on motion of a defendant, may grant a new trial to defendant if required in the interest of justice.

A. 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.

B. A motion for a new trial based on the ground of newly discovered evidence may be made only within thirty (30) days after final judgment, but if an appeal is pending then the Court may grant the motion only on remand of the case.

C. 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 34. Suspension of Sentences – Probation**

A. *Granting Probation.* After conviction of an offense, the defendant may be placed on probation, under such terms and conditions as the Court deems just, taking into consideration any prior criminal record of the defendant, his/her background and characteristics helpful in determining the advisability of probation. Probation shall be no longer than the statutory penalty.

B. *Exception.* Any person who has been previously convicted of a Class A offense, or classified as a habitual offender, or is otherwise prohibited from receiving probation under this Code, shall not be eligible for probation.

C. *Violations of Conditions of Probation.* If any person violates the terms and conditions of probation, the Court may, after giving him/her notice and the opportunity for a hearing in open court, revoke or alter the terms of his/her probation. A probation violation may come before the Court via motion by the prosecutor or affidavit from the probation officer, and the Court may issue a bench warrant for the probationer upon receiving credible evidence that a probation violation may have occurred. Any person whose probation is revoked may be required to serve the original sentence plus an additional one-half of such original sentence, as punishment for probation violation.

D. *Probation Revocation Hearing.* A probationer is entitled to a hearing before the Court prior to revocation of probation, or

may waive such hearing and admit to violating a condition of probation. If the probationer is before the court on a bench warrant issued under Rule 34.C. or other warrant issued by the Court, the Court may address the probation violation at arraignment. If the probation violation is admitted, the Court may revoke probation without hearing.

1. If the probationer requests a hearing on the probation violation, the hearing shall be scheduled without undue delay. The subject matter of a probation revocation hearing is limited to alleged knowing violation(s) of probation condition(s). A violation of a condition is deemed to be a knowing violation if the probationer signed and was given a copy of the conditions of probation.

2. No jury shall be afforded for a probation revocation hearing.

3. The probationer has a right to counsel at his or her own expense and may call witnesses or introduce evidence in his or her own behalf and may cross-examine any prosecution witness. Hearsay evidence is admissible, although a decision to revoke probation may not be based solely on hearsay evidence. The prosecutor may show any aggravating circumstances, and the probationer may show any mitigating circumstances.

4. The Court may determine the appropriate disposition of the alleged probation violation by balancing the probationer's interest in liberty, employment, family ties, responsibilities, health, or community

ties against the Tribe's interest in rehabilitation, public safety, victim(s') rights, and the probationer's duty to comply with each condition of probation.

5. An order revoking probation shall be in writing and shall contain findings of fact and conclusions of law supporting the revocation.

### **Rule 35. Deferred Sentences**

- A. Where a sentence has been imposed, the Judge may, in his discretion, defer the imposition of the sentence and impose any reasonable restrictions or conditions during the period of deferred imposition. The Judge may, in his discretion, revoke the suspension after giving the offender a hearing prior to the revocation.

- B. Where the Court has deferred the imposition of a sentence and the time period of the deferment has expired, upon motion of the Court, the defendant or the defendant's representative, the Court may commute any remaining sentence.

### **Rule 36. Parole**

- A. Any person sentenced by a Judge, who has without misconduct served one-half the sentence imposed by such Judge, shall be eligible for parole, except that any person designated a habitual offender, who is serving a sentence after having probation or a deferred sentence revoked, or is otherwise prohibited from receiving parole under this Code is not entitled to parole under this Rule.

- B. Anyone desiring parole may apply to any Judge. Such Judge will review the circumstances of the potential parolee, and determine whether he/she has served one-half of his sentence, is not guilty of any misconduct, and is not a habitual offender or



serving a sentence after having probation or a deferred sentence revoked. The Court may also consider any other pertinent information before acting on a parole application. If all requirements are met, the prisoner may be released on parole for the remainder of his/her sentence, subject only to the terms and conditions he/she has, in writing, agreed to comply with.

C. *Violations.* Any parolee who violates any provision of his/her parole shall be apprehended and receive a parole revocation hearing, while shall be conducted in the same manner as a probation revocation hearing under Rule 34.D. Upon a determination that parole was violated, the defendant shall be confined to serve the remainder of the original sentence without diminishment for time the person was free on parole.

### **Rule 37. Commutation of Sentences**

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.

### **Rule 38. Appeal**

A. *Notification of Right to Appeal.* Following the imposition of judgment of guilty, except upon a plea of guilty, the Court shall inform the defendant that he/she has a right to appeal.

B. *Appealable Orders.*

1. The defendant has the right to appeal from
  - a. A final judgment of conviction

- b. An order made, after judgment, affecting defendant's substantial rights.

2. The prosecution has the right to appeal from

- a. A judgment of dismissal in favor of the defendant upon motion to dismiss based on any procedural irregularity occurring before or during trial.

- b. An order arresting judgment or acquitting the defendant contrary to the verdict of the jury or before such verdict can be rendered.

- c. An order of the Court directing the jury to find for the defendant.

- d. An order made after judgment affecting the substantial rights of the prosecution.

C. An appeal is taken by filing a Notice of Appeal with the Court within seven (7) calendar days of the date of the final judgment or post-judgment order being appealed.

### **Rule 39. Stay of Judgment and Relief Pending Review.**

A. A sentence of imprisonment may be stayed if an appeal is taken and the defendant may be given the opportunity to make bail. Any defendant not making bail or otherwise obtaining release pending appeal shall have all time spent in incarceration counted towards his/her sentence in the matter under appeal.

B. A sentence to pay a fine or a fine and costs may be stayed pending appeal upon motion of the defendant but the Court may require the defendant to pay such money subject to return if the appeal should favor the defendant and negate the requirements for paying such.

C. An order placing the defendant on probation may be stayed on motion of the defendant if an appeal is taken.

D. All other punishment orders rendered pursuant to judgment may be stayed pending appeal, subject only to a cash bond the Judge may require to insure performance and/or the presence of the appellant.

#### **Rule 40. Expungement**

##### **A. Eligibility.**

1. Any person charged with any criminal offense under the jurisdiction of the Tribal Court and has been adjudged not guilty either by judge or jury may petition the Court to have all records (Court and Law Enforcement) of the matter expunged.

2. Any person charged with any criminal offense under the jurisdiction of the Tribal Court that has been dismissed with prejudice may petition the Court to have all records (Court and Law Enforcement) of the matter expunged.

3. Any person charged with any criminal offense under the jurisdiction of the Tribal Court and has been adjudged guilty either by judge or jury and that qualifies under any of the below-mentioned criteria, may petition the Court to have all records (Court and Law

Enforcement) of the matter expunged:

a. Successful completion of sentence; or

b. Successful completion of suspension or deferred imposition of sentence; or

c. Successful completion of probation.

##### **B. Procedure.**

1. A Petition for Expungement shall contain a request for expungement of records of one cause only, and also shall include:

a. The date of Petition,

b. Petitioner's name,

c. Petitioner's age,

d. The cause number of the charged offense for which petitioner seeks expungement.

e. The crime charged,

f. The disposition of the Court,

g. The applicable qualification under Rule 40.A, and

h. A statement provided by the Clerk of Court that any applicable qualification under Rule 40.A was successfully completed.

2. Upon receipt of Petition for Expungement, the Court shall issue an order with 30 days of the filing date of the Petition.

3. Upon receipt of Petition for Expungement, the Court shall review all court and law enforcement documents in consideration of the Petition.

C. The Court shall use its discretion in determination of whether to order expungement of records; however, expungement is presumed to be unavailable for sexual offenses absent exceedingly good cause.

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#### **Rule 41. Medical Examination and Care**

A. At the discretion of a Judge, any person whom the Judge believes to be in need of the care of a medical and/or psychiatric facility, may be referred to such facility for care and treatment.

B. At the recommendation of any qualified physician of the United States Public Health Service or Indian Health Services, the Judge may order any person to submit to appropriate medical and/or psychiatric treatment.

#### **Rule 42. Criminal Contempt**

A. Criminal contempt may be declared by any judge of the Northern Cheyenne Tribe for:

1. misbehavior of any person in a court proceeding; or

2. disobedience or resistance to any process, order, subpoena, warrant or command of the Court.

B. *Misbehavior* means

1. disorderly or insolent behavior in the presence and view of the Court that disrupts proceedings or impairs respect of the Court's authority;

2. breach of peace, noise or other disturbance interrupting Court proceedings;

3. acting as an officer, spokesperson or other official of the Court without authority;

4. publication of false or grossly inaccurate reports of Court proceedings;

5. any other interference with the process, proceeding or dignity of the Court or a Judge of the Court while performing official duties.

C. 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. Any other contempt shall be determined at a hearing by the Court in which the accused is given notice and an opportunity to be heard.

D. No jury trial is allowed for contempt proceedings.

E. Criminal contempt is a Class C offense, and is also punishable by up to five (5) days' imprisonment, and a Judge may issue any order necessary to allow the person to purge the contempt in addition to any other sentence.

**Rule 43. Clerical Mistakes**

Clerical mistakes in judgments, orders, pleadings, 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 44. 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.



**LAW AND ORDER CODE**

**TITLE VI - RULES OF EVIDENCE**

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## CHAPTER 1. GENERAL

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#### 6.1.1 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 and to eliminate unjustifiable expense and delay in court proceedings, to the end that the truth may be ascertained in a fair and speedy manner.

#### 6.1.2 Tribal Custom and Tradition

Customs and tradition may be used as evidence. Any directly conflicting procedural rule within this Title VI which is shown by the party presenting evidence of an applicable custom or tradition shall be superseded by the specific presentation of such 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. Northern Cheyenne custom and tradition shall be established by testimony or affidavit of an expert or by the Chief Judge of the Northern Cheyenne Courts. An expert is a Tribal elder or other person recognized by the Northern Cheyenne Tribal community as

knowledgeable in Tribal custom and tradition.

#### 6.1.3 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.

#### 6.1.4 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 that it would be without the evidence, including evidence on the credibility of a witness or hearsay declarant.

#### 6.1.5 Definitions

A. *Direct Evidence.* That which proves the fact in dispute directly, without an interference 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.

C. *Inference*. A deduction the jury makes from the facts proved, without an express direction of the law to that effect.

D. *Presumption*. An assumption of fact that must be made from another fact or group of facts found or otherwise established in the action or proceeding.

#### **6.1.6 Burden of Proof**

The burden of proof lies on the party who presents evidence to demonstrate that such evidence is admissible.

#### **6.1.7 Instruction to Jury on Evaluation of Evidence**

The jury is to be instructed with the following 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/her testimony is to be distrusted in others;

C. That an accomplice's testimony shall be viewed with distrust;

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.

E. 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.

#### **6.1.8 Illegally Obtained Evidence**

Evidence obtained under any condition or circumstance that would violate any law of the Northern Cheyenne Tribe shall be inadmissible in any Tribal court.

#### **6.1.9 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.

#### **6.1.10 Presentation and Foundation**

Each party, when presenting evidence, must first show in open court, through the use of a witness, the reliability and the relevance of the evidence, unless already shown to be substantially reliable and relevant to the case in the discretion of the presiding judge.

#### **6.1.11 Presentation of Witnesses**

Each party when calling a witness must first show in open court who the witness is, the witness' 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 of the witness to provide information, the credentials of the witness, or relevancy of the witness. Attacks by the opposing party may include a preliminary direct examination of the witness solely for establishment purposes.

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#### 6.2.1 Evidence Subject to Judicial Notice

The Court shall take judicial notice of federal acts, statutes, and treaties, statutes of every state, both federal and Tribal constitutional guarantees and protections, duly enacted ordinances of a state or tribe, and governmental regulations of every other reservation and other jurisdiction within 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 that fact to be judicially noticed is one not subject to reasonable dispute.

#### 6.2.2 Procedure for Judicial Notice

The party requesting judicial notice shall furnish the Court with 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 relevancy of that law, act or statement.

#### 6.2.3 Jury Instruction on Judicial Notice

The Court shall direct the jury to find as relevant any fact judicially noticed.

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#### 6.3.1 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.

#### 6.3.2 Rule

Hearsay is inadmissible as evidence except as stated elsewhere in this Title or otherwise expressly allowed in Tribal law.

#### 6.3.3 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 issues 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 the finding of the presiding judge, 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. A record of a birth, death, or marriage, if recorded with a public office or governmental body.

D. A record of an act, event, condition, opinion, or diagnosis if:

1. the record was made at or near the time by, or from information transmitted by, someone with knowledge;

2. the record was kept in the course of a regularly conducted activity of a business, organization, or occupation, whether or not for profit;

3. taking the record was a regular practice of that activity.

E. A statement or record that:

1. is made for, and is reasonably pertinent to, medical diagnosis or treatment;

2. describes medical history; past or present symptoms or sensations; their inception; or their general cause; and

3. is made or proffered by a licensed medical practitioner or from the medical practice or office thereof.

F. A record or statement of a public office or law enforcement agency or representative if it sets out:

1. the office's activities;

2. a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law-enforcement personnel; or

3. in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation.

G. Market quotations, lists, directories, or other compilations that are generally relied on by the public or by persons in particular occupations.

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#### 6.4.1 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.

#### 6.4.2 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.

#### 6.4.3 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 matters already disclosed, is a basis for a reasonable inference that a crime has been committed.

#### 6.4.4 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/her. He/she cannot be compelled in a criminal action to be a witness against him/herself. Except, a defendant in a criminal case who takes the stand to testify on his own behalf may be required to give testimony against him/herself. Such testimony shall be limited to the charge on trial.

#### 6.4.5 Attorney-Client Privilege

An attorney cannot, without the consent of the client, be examined as to any communication made by the client to the attorney or the advice given to the client in the course of professional employment. A client cannot, except voluntarily, be examined as to any communication made by the client to the client's attorney or the advice given to the client by the attorney in the course of the attorney's professional employment. 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 civil offense.

#### 6.4.6 Lay Advocate-Client Privilege

A lay 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 a lay advocate's representation to a client is privileged and cannot be disclosed without the client's consent. 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 advocacy was sought or obtained in order to enable or aid the client to commit or to plan to commit a crime or civil offense.

#### **6.4.7 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 spouse or someone in the other spouse's immediate family.

#### **6.4.8 Clergy-Penitent Privilege**

A member of the clergy or priest may not, without the consent of the person making the confession, be examined as to any confession made to the individual in the individual's professional character in the course of discipline enjoined by the church to which the individual belongs.

#### **6.4.9 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.

#### **6.4.10 Public Officer**

A public officer cannot be examined as to official information communicated to him in an official confidence when, in the discretion of the judge, public interest would suffer by the disclosure.

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#### **6.5.1 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.

#### **6.5.2 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 him/herself concerning the matter so as to be understood by the judge and jury either directly or through interpretation by

one who can understand him/her of 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.

### **6.5.3 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.

### **6.5.4 Oath**

Before testifying, every witness shall be required to declare that he/she will testify truthfully, by oath or affirmation administered in a form calculated to awaken his/her conscience and impress his/her mind with his/her duty to do so.

### **6.5.5 Judge 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 determination of chance.

### **6.5.6 Advocate as Witness**

When a lay-advocate or attorney is a witness for his/her client upon any trial except as to merely formal matters, such as the attestation or custody of an instrument of the like, he/she shall not further participate in such trial.

### **6.5.7 Exclusion of Witness**

The court on its own motion, 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, or an officer or employee of a party, which is not a natural person, and such officer or employee of that party is 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.

### **6.5.8 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.

### **6.5.9 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/her field of expertise.

### **6.5.10 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/her testimony or the determination of a fact issue.

## CHAPTER 6. DOCUMENTS

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#### 6.6.1 Authentication of Writing

A writing offered in evidence as authentic is admissible only if sufficient evidence has been introduced to sustain a finding of its authenticity or the judge finds the writing: (a) is at least thirty (30) years old at the time it is so offered; or (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.

#### 6.6.2 Self-Authenticated Documents

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

1. *Domestic public documents under seal.* A document bearing a seal purporting to be that of the United States, or of any state, tribal, district, commonwealth, territory, or insular possession thereof, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

2. *Domestic public documents not under seal.* Except as otherwise provided by statute, a document purporting to bear the signature in the official capacity of an officer or employee of any entity included in Section 6.6.2.1 hereof, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

3. *Certified copies of public records.* A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with Sections 6.6.2.1 or 2 or complying with any law of the United States, any tribe, or any state.

4. Books, pamphlets, or other publications purporting to be issued by public authority.

5. Printed materials purporting to be newspapers or periodicals.

6. Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.

7. Documents accompanied by a certificate of acknowledgement executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgements.

8. Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.

9. Any signature, document, or other matter declared by any law of the United States or of this state to be presumptively or prima facie genuine or authentic.

10. Photographs of any individual, occurrence, or event being currently described, so long as the photographs can be corroborated as showing the correct individual, occurrence, or event by a witness or by the photographer.



**LAW AND ORDER CODE**  
**TITLE VII – CRIMINAL OFFENSES**

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## CHAPTER 1. GENERAL PROVISIONS

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#### 7.1.1 Criminal Offenses Based on Voluntary Conduct

No person shall be convicted of an offense except based on conduct which includes a voluntary act or the omission to perform an act of which the defendant is physically capable. Unless otherwise provided in this Code with respect to a particular offense, an offense is established only if a person acts intentionally with respect to the offense.

#### 7.1.2 States of Mind

A. *Intentional or intentionally.* A defendant's state of mind is intentional with respect to result or to conduct if the defendant's conscious objective is to engage in such conduct or to cause such a result.

B. *Knowingly.* A person acts knowingly if he/she is aware of his/her conduct or that the circumstance exists or that it is highly probable that such result will be caused by his/her conduct.

C. *Negligent.* Conduct is negligent if, with respect to a result or to a circumstance, a person should be aware of a substantial and

unjustifiable risk that such a result will occur or that such a circumstance exists, and his/her conduct involves a significant deviation from the standard of care that a reasonable person would observe.

D. *Reckless.* Conduct is reckless if, with respect to a result or to a circumstance, a person consciously disregards a substantial risk that such result will occur or that such a circumstance exists, and the risk is of such a nature and degree that its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the situation.

#### 7.1.3 Burden of Proof

A. The Tribe has the burden of proving each element of an offense beyond a reasonable doubt.

B. Whenever the defendant introduces sufficient evidence of a defense to support a reasonable belief as to the existence of that defense, the Tribe has the burden of disproving such defense beyond a reasonable doubt, unless this Code expressly requires otherwise.

#### 7.1.4 Serious Bodily or Physical Injury

*Serious bodily or physical injury* means injury to the body that:

A. Creates a substantial risk of death;

B. Causes serious permanent disfigurement or protracted loss or impairment of the function or process of a bodily member or organ; or

C. At the time of injury, can reasonably be expected to result in serious permanent



disfigurement or protracted loss or impairment of the function or process of a bodily member or organ.

#### **7.1.5 Minor**

A *minor* is defined as any person under the age of eighteen (18). A minor may also be referred to as a *child*.

#### **7.1.6 Bureau of Indian Affairs Enforcement Authority**

The Northern Cheyenne Tribal Council authorizes the Bureau of Indian Affairs to enforce this Title and the offenses in this Title.

#### **7.1.7 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/she 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 on its behalf to the same extent as if it were performed in his/her 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 him/herself.
3. When a person is convicted of an offense by reason of his/her legal accountability for the conduct of a corporation or an unincorporated association, he/she is subject to the sentence authorized by law when a natural person is convicted of an offense of the class involved.

#### **7.1.8 Offense Classes**

A. Offenses are divided into 3 classes, which are denominated and subject to maximum penalties, as follows:

1. Class A, for which a maximum penalty of one (1) year imprisonment, a fine of \$5,000.00, or both, may be imposed.

2. Class B, for which a maximum penalty of six months' imprisonment, a fine of \$2,500.00, or both, may be imposed.

3. Class C, for which a maximum penalty of a \$1000.00 fine may be imposed.

4. However, the Court may subject a defendant to a fine greater than \$5,000 but not to exceed \$15,000 if the defendant is a person accused of a criminal offense who

a. has been previously convicted of the same or a comparable offense by any jurisdiction in the United States; or

b. is being prosecuted for an offense comparable to an offense that would be punishable by more than 1 year of imprisonment if prosecuted by the United States or any of the States.

B. In addition to the penalties set forth above, the Court may order restitution in an amount and manner to be set by the Court considering the nature of the crime and the convicted person's ability to pay the restitution.

C. In addition to the penalties set forth above, the Court may order a person convicted of a violent crime to turn in firearms, explosives, and other weapons, and to not acquire such weapons for a maximum of one (1) year based upon a finding that the convicted person represents a credible threat to the physical safety of the victim, or the victim's family or associates, or any person involved in the legal process that led to a conviction. Violation of any such order is a Class A offense.

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#### **7.2.1 Ignorance or Mistake**

A. Ignorance or mistake as to a matter of fact or law is a defense if:

1. The ignorance or mistake negates the necessary mental state required for the commission of an offense; or

2. The law provides that the state of mind established by such ignorance or mistake constitutes a defense.

B. Whenever in this Code an offense depends on a child being below 16 years of age, it is no defense that the defendant did not know the child's age, or reasonably believed the child to be older than 16 years of age. When criminality depends on the child's being below a critical age other than 14 years of age, it is an affirmative defense for the defendant to prove that he/she reasonably believed the child to be above the critical age.

#### **7.2.2 Public Duty**

Conduct is justified and an affirmative defense when it is required or authorized by law.

### **7.2.3 Intoxication**

- A. Intoxication is not a defense unless it negates an element of the offense.
- B. When negligence or recklessness establishes an element of the offense, self-induced in- toxication is no defense.
- C. Intoxication does not constitute a mental disease or defect within the meaning of Section 7.2.4.

### **7.2.4 Mental Disease or Defect**

- A. A person is not responsible for criminal conduct if, at the time of such conduct, as a result of mental disease or defect the person lacks substantial capacity either to appreciate the wrongfulness of that conduct or to conform that conduct to the requirements of law.
- B. As used in this Section, the terms *mental disease or defect* do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

### **7.2.5 Duress**

It is an affirmative defense that the actor engaged in the conduct charged to constitute an offense because he/she was coerced to do so by the use of, or a threat to use, unlawful force against his/her person or the person of another, which a person of reasonable firmness in his/her situation would have been unable to resist and the actor did not recklessly or negligently place him/herself in a situation in which it was probable he/she would be subject to duress.

### **7.2.6 Self-Defense**

- A. The use of reasonable force is a defense when a person reasonably believes

that such force is immediately necessary to protect him/herself.

- B. The use of reasonable force for the purpose of resisting arrest, execution of process, or other performance of duty by a public servant regardless of whether the conduct of the public servant is lawful is not a defense unless the actions of the public servant are clearly excessive.

### **7.2.7 Defense of Others**

The use of force to defend a third person is a defense if the defendant:

- A. reasonably believes that the person whom he/she seeks to protect would be justified in using such protective force; and
- B. reasonably believes that intervention is necessary for the protection of such other person.

### **7.2.8 Defense of Property**

The use of force, other than deadly force, is a defense if the defendant reasonably believes that such force is necessary to prevent or terminate conduct which the defendant reasonably believes to be the commission or attempted commission of a crime involving trespass, damage to, or theft of property.

### **7.2.9 Use of Deadly Force**

The use of deadly force is a defense only where the defendant reasonably believes that such force is necessary to protect him/herself or another person against death, serious bodily harm, kidnaping, a sexual act as defined in 7.4.12.A.1 compelled by force or threat, or to prevent or terminate the commission or attempted commission of arson.

### **7.2.10 Entrapment**

A 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/she induces or encourages another person to engage in conduct constituting an offense by either:

- A. Making knowingly false representations designed to induce the belief that such conduct is not prohibited; or
- B. Employing methods of persuasion or inducement which creates a substantial risk that such an offense will be committed by persons other than those who are ready to commit it.

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### **7.3.1 Criminal Complicity and Solicitation**

A. A person may be convicted of an offense based upon the conduct of another person when:

- 1. acting with the state of mind sufficient for the commission of the offense, the defendant causes another person to engage in such conduct;
- 2. with the intent that an offense be committed, the defendant solicits, requests, commands, induces or intentionally aids another person to engage in such conduct; or

- 3. having a legal duty as a law enforcement officer to prevent the offense, the defendant fails to make proper effort to do so.

B. The penalty for being an accomplice to a crime is the same as the penalty for being a principal in the crime.

C. A person is not liable under this Section for the conduct of another if he/she terminates his/her complicity prior to the commission of the offense and gives timely warning to law enforcement authorities or otherwise makes proper effort to prevent the commission of the offense.

### **7.3.2 Conspiracy**

A. A person commits the offense of conspiracy when, with the purpose that an offense be committed, he/she 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/her 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 Attempt

A. A person is guilty of an attempt to commit a crime who intentionally does or omits to do anything which, under the circumstances as the defendant believes them to be, is an act or omission constituting a substantial step toward the commission of a crime.

B. A person who engages in conduct designed to aid another person to commit a crime which would establish complicity under subsection A if the crime were committed by such other person is guilty of an attempt to commit the crime, although the crime is not actually committed or attempted.

C. Conduct is not criminal which could only be characterized as an attempt to commit a crime which is itself defined solely in terms of attempt.

D. The penalty for an attempted crime is the same as the penalty for the completed crime.

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### 7.4.1 Murder

A. Whoever intentionally causes the death of another human being commits murder.

B. Murder is a Class A Offense.

#### **7.4.2 Manslaughter**

A. A person who recklessly causes the death of another human being commits manslaughter.

B. Manslaughter is a Class A Offense.

#### **7.4.3 Negligent Homicide**

A. A person who negligently causes the death of another human being commits negligent homicide.

B. Negligent homicide is a Class A Offense.

#### **7.4.4 Causing or Aiding Suicide**

A. A person who intentionally causes or aids another person to commit or attempt to commit or attempt suicide commits causing or aiding suicide.

B. Causing or aiding suicide is a Class A Offense.

#### **7.4.5 Kidnapping**

A. Any person who by force, threat or deception:

1. removes another against his/her will from his/her place of residence or business or a substantial distance from the vicinity from where he/she is located; or

2. Confines another for a significant period against his/her will,

commits kidnapping.

B. Where the victim is 12 years of age or less, it shall be presumed that the removal or confinement was against the victim's will.

C. Any natural or adoptive parent who by force, threat, or deception, or without

knowledge or agreement of the child's custodian, removes that parent's child from the physical custody of any person who has custody of the child pursuant to a court order, and keeps that child for a significant period, is guilty of kidnapping. In determining whether a period of time is significant for purposes of this subsection, the Court must evaluate the surrounding facts and circumstances, including without limitation the age of the child and the length of previous authorized visits with the offender. In a particular case, a relatively brief period may be considered insignificant.

D. Kidnapping is a Class A Offense.

#### **7.4.6 Harboring A Child**

A. Whoever removes, confines, harbors or keeps a minor or other incompetent without the consent of a parent, guardian or other person responsible for general supervision of the welfare of the minor or other incompetent commits harboring a child; provided however, that no person shall be guilty of harboring a child who notifies a law enforcement officer of the child's whereabouts.

B. Harboring a child is a Class B Offense for the first offense, and a Class A Offense for each subsequent offense.

#### **7.4.7 False Imprisonment**

A. A person who intentionally makes or causes the unlawful arrest, imprisonment or detention of another person commits false imprisonment if the offender knows or reasonably should have known that the arrest, imprisonment or detention is without lawful authority.

B. False imprisonment is a Class A Offense.

#### **7.4.8 Custodial Interference**

A. A person commits the offense of custodial interference if, knowing that the person has no legal right to do so, the person takes, entices, or withholds from lawful custody any child, incompetent person or other person entrusted by authority of law to the custody of another person or institution.

B. Custodial interference is a Class A Offense.

#### **7.4.9 Indecent Exposure**

A. A person who exposes his/her genitals or other intimate parts under circumstances likely to cause affront or alarm is commits indecent exposure.

B. Indecent exposure is a Class B offense, except that second and subsequent offenses shall be a Class A offense.

#### **7.4.10 Stalking**

A. A person commits the offense of stalking if the person intentionally causes another person substantial emotional distress, fearing for the safety of self or others, or reasonable apprehension of bodily injury or death by repeatedly:

1. following the stalked person, or persons defined as a “partner” or “family member” in Section 7.4.34; or
2. harassing, threatening, or intimidating the stalked person in person or by third party, by electronic communication or monitoring, by

mail, or by other action, devise or method.

B. Stalking is a Class B offense. A person convicted of stalking may be sentenced to pay all medical, counseling, and other costs incurred by or on behalf of the victim as a result of the offense.

C. Upon presentation of credible evidence of a violation of this section, an order may be granted restraining a person from engaging in the activity described in subsection 1.

D. Attempts by the accused person to contact or follow the stalked person after the accused person has been given actual notice that the stalked person does not want to be contacted or followed constitutes prima facie evidence that the accused person intentionally followed, harassed, threatened, or intimidated the stalked person.

#### **7.4.11 Sexual Assault**

A. A person who intentionally subjects another person to any sexual contact without consent commits the offense of sexual assault.

B. Sexual contact means any intentional touching of the sexual or other intimate parts of the person of another, whether clothed or unclothed, with no valid medical purpose.

C. A person convicted of sexual assault commits a Class B offense.

#### **7.4.12 Aggravated Sexual Assault**

A. A person who intentionally subjects another person to any sexual contact without consent commits the offense of aggravated sexual assault if:

1. The sexual contact involved sexual intercourse, which 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;

2. the defendant compels the other person to submit by force or by any threat that would render a person of reasonable firmness incapable of resisting;

3. the defendant inflicts bodily injury upon anyone in the course of committing sexual assault. *Bodily injury* shall mean physical pain, illness, or any impairment of physical condition and includes mental illness or impairment;

4. the defendant has substantially impaired the other person's power to appraise or control the person's conduct by administering or employing, without the other person's knowledge, intoxicants, drugs or another similar substance with intent to prevent resistance;

5. the other person is unconscious;

6. the defendant knows that the other person submits because the other person falsely supposes the defendant to be someone else;

7. the defendant knows that the other person submits suffers from a mental disease or defect which renders that person incapable of understanding the nature of his/her conduct; or

8. the other person is in official custody or otherwise detained in a hospital, prison, or other similar institution and the defendant has supervisory or disciplinary authority over the detained person.

B. A person convicted of aggravated sexual assault commits a Class A offense.

#### **7.4.13 Aggravated Sexual Assault of a Child**

A. A person who commits sexual assault as defined in Section 7.4.11 where

1. the victim is 14 years of age or younger, or

2. the victim is 16 years of age and the offender is 3 or more years older than the victim, or

3. The victim is under 18 years of age and where any one of the following additional factors is present:

a. the offender is the natural or adoptive parent, grandparent, sibling, aunt, or uncle of the victim;



- b. the offender has temporary or permanent care, custody, control, or supervision over the victim;
- c. there were repeated assaults over a period of time; or
- d. force or threats were employed during the assault.

commits aggravated sexual assault of a child.

B. Aggravated sexual assault of a child is a Class A offense.

#### **7.4.14 Sexual Exploitation of a Child**

A. A person commits the offense of a sexual exploitation of a child if the person:

- 1. intentionally employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;
- 2. intentionally photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes, or records a child engaging in sexual conduct, actual or simulated;
- 3. intentionally, by any means of communication, including electronic communication, persuades, entices, counsels, or procures a child under 16 years of age or a person the offender believes to be a child under 16 years of age to engage in sexual conduct, actual or simulated;
- 4. intentionally processes, develops, prints, publishes, transports, distributes, sells, exhibits, or advertises any visual or print

medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated;

5. intentionally possesses any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated;

6. finances any of the activities described in subsections A.1 through A.4 and A.7, knowing that the activity is of the nature described in those subsections;

7. possesses with intent to sell any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated;

8. intentionally travels within, from or to the Reservation with the intention of meeting a child under 16 years of age or a person the offender believes to be a child under 16 years of age in order to engage in sexual conduct, actual or simulated; or

9. intentionally coerces, entices, persuades, arranges for, or facilitates a child under 16 years of age or a person the offender believes to be a child under 16 years of age to travel within, from or to the Reservation with the intention of engaging in sexual conduct, actual or simulated.

B. Sexual exploitation of a child is a Class A offense.

C. An offense is not committed under subsections A.4 through A.7 if the visual or print medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if the activity is financed, as part of a sexual offender information or treatment course or program conducted or approved by the Court and/or a law enforcement or corrections agency.

D. As used in this section, the following definitions apply:

1. *Electronic communication* means a sign, signal, writing, image, sound, data of any nature transmitted or created in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system.

2. *Sexual conduct* means:

- a. Actual or simulated:
- b. sexual intercourse, whether between persons of the same or opposite sex;
- c. penetration of the vagina or rectum by any object, except when done as part of a recognized medical procedure;
- d. bestiality;
- e. masturbation;
- f. sadomasochistic abuse;
- g. lewd exhibition of the genitals, breasts, pubic or rectal area, or other intimate parts of any person;

h. defecation or urination for the purpose of the sexual stimulation of the viewer; or

i. depiction of a child in the nude or in a state of partial undress with the purpose to abuse, humiliate, harass, or degrade the child or to arouse or gratify the person's own sexual response or desire or the sexual response or desire of any person.

3. *Simulated* means any depicting of the genitals or pubic or rectal area that gives the appearance of sexual conduct or incipient sexual conduct.

4. *Visual medium* means:

- a. any film, photograph, videotape, negative, slide, or photographic reproduction that contains or incorporates in any manner any film, photograph, videotape, negative, or slide; or
- b. any disk, diskette, or other physical media that allows an image to be displayed on a computer or other video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite transmission, or other method.

#### **7.4.15 Provisions Applicable to Sex Offenses**

##### **A. *Minimum Penalties.***

1. An offender convicted of Aggravated Sexual Assault, Aggravated Sexual Assault of a Child or Sexual Exploitation of a Child shall be required to serve a mandatory minimum jail sentence of at least six months and shall be fined not less than \$1,000.00.

2. An offender convicted a second time of Aggravated Sexual Assault, Aggravated Sexual Assault of a Child or Sexual Exploitation of a Child shall be required to serve a mandatory minimum jail sentence of at least one (1) year and shall be fined not less than \$3,000.00.

3. An offender convicted of any subsequent offenses of Aggravated Sexual Assault, Aggravated Sexual Assault of a Child or Sexual Exploitation of a Child shall be required to serve a mandatory minimum jail sentence of one (1) year and shall be fined at least \$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.

##### **B. *Statute of Limitations.***

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 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).

##### **C. *Consent.***

1. A person sixteen (16) years of age or younger does not have the legal capacity to consent.

2. Force, fear, or threat alone, as well as any form of incapacity, is sufficient to show lack of consent.

##### **D. *Evidence of Victim's Behavior.***

1. 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.

2. Evidence of failure to make a timely complaint or immediate outcry does not raise any presumption as to the credibility of the victim.

3. Resistance by the victim is not required to establish lack of consent.

#### **7.4.16 Aggravated Assault**

A. A person commits an aggravated assault if he/she:

1. intentionally causes serious bodily injury to another; or
2. intentionally causes bodily injury to another with a deadly weapon; or
3. recklessly causes serious bodily injury to another under circumstances manifesting indifference to the value of human life; or
4. knowingly causes bodily injury to another while in custody in a criminal detention facility. [*Ord. DOI-009 (2019)*]

B. Aggravated assault is a Class A offense.

#### **7.4.17 Simple Assault**

A. A person commits a simple assault if he/she:

1. intentionally causes bodily injury to another; or
2. recklessly or negligently causes bodily injury to another with a deadly weapon;
3. attempts by physical menace to put another in fear of serious bodily harm; or
4. by physical menace causes another to harm himself/herself.

B. Simple assault is a Class B offense.

#### **7.4.18 Assault with Bodily Fluid**

A. A person commits the offense of assault with a bodily fluid if the person intentionally causes one of the person's

bodily fluids to make physical contact with a law enforcement officer, a staff person of a correctional or detention facility, or emergency responder or health care provider performing emergency services in the course and scope of the occupation:

1. during or after an arrest for a criminal offense;
2. while the person is incarcerated in or being transported to or from a jail or detention facility, or health care facility; or
3. if the person is a minor, while the youth is detained in or being transported to or from a jail or detention or correctional facility, health care facility or shelter care facility.

B. Assault with a bodily fluid is a Class A offense.

C. As used in this section, the following definitions apply:

1. *Bodily fluid* means any bodily secretion, including without limitation feces, urine, blood, and saliva.
2. *Health care provider* means a person who is licensed, certified, or otherwise authorized by law to provide health care in the ordinary course of business or practice of a profession.
3. *Emergency responder* means a licensed medical services provider, law enforcement officer, firefighter, volunteer firefighter or officer of a nonprofit volunteer fire company,

emergency medical technician, emergency nurse, ambulance operator, provider of civil defense services, or any other person who in good faith renders emergency care or assistance at a crime scene or the scene of an emergency or accident.

#### **7.4.19 Assault by Strangling**

A. A person commits assault by strangling if he/she:

1. intentionally or recklessly impeding the normal breathing or circulation of the blood of a person by applying pressure to the throat or neck, regardless of whether such conduct results in any visible injury and regardless of whether there is any intent to kill or protractedly injure the victim; or

2. intentionally or recklessly impeding the normal breathing of a person by covering the mouth of the person, the nose of the person, or both, regardless of whether such conduct results in any visible injury and regardless of whether there is any intent to kill or protractedly injure the victim.

B. Assault by strangling is a Class A offense.

#### **7.4.20 Criminal Endangerment**

A. A person who knowingly engages in conduct that creates a substantial risk of death or serious bodily injury to another commits the offense of criminal endangerment.

B. For the purposes of this section, *knowingly* means that the person is aware of

the high probability that the conduct in which he or she is engaging, whatever the conduct may be, will cause substantial risk of death or serious bodily injury to another.

C. Criminal endangerment is a Class B offense.

#### **7.4.21 Negligent Endangerment**

A. A person who negligently engages in conduct that creates a substantial risk of death or serious bodily injury to another commits the offense of negligent endangerment.

B. Negligent endangerment is a Class C offense.

#### **7.4.22 Abuse of a Child**

A. A parent, guardian or other person legally responsible for the care and welfare of a child under 18 years of age who engages in the abuse of that child or fails to make reasonable efforts to prevent the infliction of abuse by another of that child commits abuse of a child

B. Child abuse is when someone under the age of 18 years of age has suffered or is likely in the immediate future to suffer physical or emotional injury because of any person inflicting or failing to make reasonable efforts to prevent the infliction of such injury, including without limitation excessive corporal punishment or act of sexual abuse or molestation.

C. Abuse of a child is a Class B offense for the first offense and a Class A for all subsequent offenses.

#### **7.4.23 Aggravated Abuse of a Child**

A. A person commits extreme abuse of a child under 18 years of age if that person:

1. inflicts serious bodily or physical injury to a child; or
2. fails to make reasonable efforts to prevent the infliction of serious bodily or physical injury to a child.

B. Aggravated abuse of a child is a Class A offense.

#### **7.4.24 Endangering the Welfare of a Child**

A. Any parent, guardian or other person legally responsible for the care and welfare of a child under 18 years of age commits the offense of endangering the welfare of a child if the parent, guardian, or other person intentionally endangers the child's welfare by violating a duty of care, protection or support.

B. Any parent, guardian or other person legally responsible for the care and welfare of a child under 18 years of age, whether or not the parent, guardian, or other person is supervising the welfare of the child, commits the offense of endangering the welfare of children if the parent, guardian, or other person intentionally contributes to the delinquency of a child less than:

1. 18 years old by:
  - a. supplying or encouraging the use of an intoxicating substance by the child; or
  - b. assisting, promoting, or encouraging the child to enter a place of prostitution; or
2. 16 years old by assisting, promoting, or encouraging the child to:

- a. abandon the child's place of residence without the consent of the child's parents or a guardian; or

- b. engage in sexual conduct.

C. Endangering the welfare of a child is a Class B offense for the first offense and a Class A for all subsequent offenses.

#### **7.4.25 Brain Assault of a Child**

A. A person is guilty of brain assault of a child when, being 18 years of age or more, such person intentionally or recklessly causes serious physical injury to the brain of a child less than 5 years old by shaking the child, or by slamming or throwing the child to impact the child's head on a hard surface or object. For purposes of this section, serious physical injury includes without limitation subdural, intracranial or retinal hemorrhaging.

B. Brain assault of a child is a Class A offense.

#### **7.4.26 Endangering an Unborn Child - Substance Abuse**

A. A person who knows she is pregnant commits endangering an unborn child by:

1. intentionally inhaling, injecting, ingesting or otherwise introducing into her bloodstream any illegal substances, drugs, non-prescribed prescription drugs, intoxicants, or any other dangerous drug as defined in Sections 7.8.13 to 7.8.17 knowing that she is pregnant;
2. intentionally ingesting alcoholic beverages so as to raise her blood alcohol content a significant

measurable level knowing she is pregnant; or

3. obtaining narcotics without notifying the healthcare provider that she is pregnant.

B. Refusal to submit to analysis of breath, blood or urine upon the request of a law enforcement officer having probable cause to suspect violation of this section shall be prima facie evidence of guilt.

C. Any woman who voluntarily discloses conduct constituting this offense to a healthcare provider (as defined in section 7.4.18) for the purpose of obtaining help to address substance abuse shall not be prosecuted under this section.

D. Endangering an unborn child is a Class B offense.

#### **7.4.27 Criminal Child Endangerment**

A. A person commits the offense of criminal child endangerment if the person intentionally or negligently causes substantial risk of death or serious bodily injury to a child under 18 years of age by:

1. failing to seek reasonable medical care for a child suffering from an apparent acute life-threatening condition;

2. placing a child in the physical custody of another who the person knows has previously intentionally or knowingly caused bodily or physical injury or sexual assault to a child;

3. manufacturing or distributing dangerous drugs in a place where a child is present;

4. driving a motor vehicle while under the influence of alcohol and/or any drugs in violation of Section 7.10.10 with a child in the vehicle; or

5. failing to attempt to provide proper nutrition for a child, resulting in a medical diagnosis of nonorganic failure to thrive or similar diagnosis.

B. Criminal child endangerment is a Class A offense.

C. A person may not be charged under subsection A.2 or A.3 if the person placed the child in the other person's custody pursuant to a court order.

D. For purposes of this Section, *nonorganic failure to thrive* means inadequate physical growth that is a result of insufficient nutrition and is not secondary to a diagnosed medical condition.

#### **7.5.28 Neglect of a Child**

A. A parent, guardian or person legally responsible for the care and welfare of a child under 18 years of age who fails to provide such food, clothing, shelter, medical attention, hygiene, education, or supervision as the child for development, although the parent or custodian had sufficient resources to furnish such needs or has refused Tribal or other assistance for furnishing such needs, and such failure is likely to result in serious bodily injury or emotional harm to the child as determined by appropriate medical or professional persons, is guilty of the offense of neglect of a child.

B. Neglect of a child is a Class B offense.

#### **7.4.29 Abandonment of a Child**

A. A parent, guardian or person legally responsible for the care and welfare of a child under 18 years of age who abandons that child as defined in Section 3.1.2 of this Code is guilty of abandonment of a child.

B. Abandonment of a child is a Class B offense for the first offense and a Class A offense for all subsequent offenses.

#### **7.4.30 Elder or Vulnerable Person Abuse**

A. A person commits the offense of elder or vulnerable person abuse by knowingly or purposely, physically or mentally, abusing or exploiting an elder or vulnerable person.

1. *Exploiting* means the unjust use of an individual's money or property for another's advantage by means of duress, menace, fraud or undue influence.

2. *Abusing* means to inflict physical or mental injury to deprive an elder person of food, shelter, clothing, or medical services necessary to maintain the health, welfare and safety of the elder or vulnerable person.

3. *Elder person* means a Tribal member or other person residing on the Reservation who is:

- a. 60 years of age or older;
- b. Determined by the Tribal Court to be an elder; or
- c. At least 45 years of age and unable to protect herself or himself from abuse, neglect, or exploitation because of a

mental disorder or physical impairment, or frailties or dependencies brought about by age or disease or alcoholism.

4. *Vulnerable person* means any person 18 years of age or older who is impaired by reason of mental illness, intellectual disability, physical illness or disability, advanced age or other causes to the extent the adult lacks sufficient understanding or capacity to make, communicate or carry out reasonable decisions concerning his or her well-being.

B. The police officer making the arrest for elder or vulnerable person abuse shall sign the complaint and include a detailed report of the circumstances of the arrest and any available statements from witnesses or victims. The victim may be 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.

C. Elder or vulnerable abuse is a Class B offense.

#### **7.4.31 Bigamy**

A. A person is guilty of bigamy if, knowing that he/she has a husband or wife or knowing that the other person has a husband or wife, he/she purports to marry another person.

B. It shall be a defense if the defendant proves by a preponderance of the evidence that he/she reasonably believed that he/she and the other person were eligible to marry



C. Bigamy is a Class B offense.

#### **7.4.32 Incest**

A. A person is guilty of incest if he/she knowingly marries 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.

#### **7.4.33 Failure to Send Minor to School**

A. Any adult person who shall, without good cause, neglect or refuse to send a minor under that person's care to school shall be guilty of failure to send minor to school.

B. Failure to send minor to school is a Class B offense.

C. This section shall apply to minors who are enrolled in schools outside of the Reservation, provided the person accused of conduct violating section 7.4.33.A is otherwise within the Tribe's criminal jurisdiction.

D. This section shall not apply to minors who have graduated from high school.

#### **7.4.34 Partner or Family Member Assault (Domestic Abuse)**

A. A person commits the offense of partner or family member assault if the person:

1. intentionally causes bodily or physical injury to a partner or family member;

2. negligently causes bodily or physical injury to a partner or family member with a weapon; or

3. intentionally causes reasonable apprehension of bodily or physical injury in a partner or family member.

B. For the purpose of this section, the following definitions apply:

1. *Family member* means mothers, fathers, children, brothers, sisters, and other past or present family members of a household. These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, in-laws, and adoptive children and parents. These relationships continue regardless of the ages of the parties and whether the parties reside in the same household.

2. *Partners* means spouses, former spouses, persons similarly situated to a spouse, persons who have a child in common, and persons who have been or are currently in a dating or ongoing intimate relationship.

3. *Spouse* means a person with whom the victim is currently living or who has lived with the victim in the past, regardless of whether they are or were married, or a person with whom the victim has a child in common, regardless of whether they were married or had lived together.

C. Partner and family member assault is a Class A offense.

D. *Sentencing*

1. A person convicted of a first offense for partner or family member assault shall be jailed for not less than 30 days and fined not less than \$500.00.

2. A person convicted a second time for partner or family member assault shall be jailed for not less than 90 days and fined not less than \$1,000.00.

3. 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.

4. Restitution to the victim shall be ordered by the Judge when appropriate.

5. Twenty-five sessions of 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 no less than monthly.

6. 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.

E. *Mandatory Arrest.*

1. 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 partner or family member assault. 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.

2. An officer, under this section, 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 (i) the intent to protect the victims of domestic abuse under this section; (ii) the comparative extent of injuries inflicted, or serious threats creating fear of physical injury; and (iii) the history of domestic abuse between the persons involved.

F. *Filing a Complaint.* The police officer making the arrest for partner or family member assault shall sign the complaint and include a detailed report of the circumstances of the arrest and any available statements from witnesses or victims. The victim may be 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 a prosecution under this section.

G. *Victim's Rights.* The victim of partner or family member assault shall be informed by the arresting police office of the local shelter, and shall see that the victim contact is made with that shelter; and shall inform the

victim that a protection 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.

H. *Reports.* In cases where a police officer is called to a scene in which partner or family member assault 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.

I. *Holding Time and Bail.* Any person arrested for partner or family member assault shall be held without bail for not less than 24 hours and more than 36 hours mandatory cooling off period. No bail schedule shall be set until the time period expires. Bail put forth cannot be forfeited in lieu of court appearance. Appearance at court before a Judge is mandatory. Those arrested and charged under this section shall not be released from custody except at arraignment.

J. *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.

#### **7.4.35 Enhanced Penalty for Offenses in Conjunction with Partner or Family Member Assault**

A. If someone convicted under Section 7.4.34 is also convicted of any of the acts listed in subsection B of this Section and the acts are done at or very near to the same time as the incident of abuse for which the defendant was convicted, then the defendant shall be considered to have committed subsequent offense for the purpose of imposing the enhanced penalty in subsection 7.4.34.D.2

B. The acts are:

1. Assault Offenses; Aggravated assault, Simple assault, Intimidation;
2. Criminal trespass
3. Criminal mischief
4. Stalking;
5. Theft;
6. Carrying a concealed dangerous weapon, Unlawful discharge of firearms;
7. Abuse of a child, Neglect of a child, Abandonment of a child.

C. *Very near to the same time* shall be defined as within 24 hours of the partner or family member assault

D. If the Tribal Prosecutor intends to seek this enhanced punishment, the Tribal Prosecutor shall file notice of this intention in the charging document.

#### **7.4.36 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/or she communicates to another, under

circumstances which reasonably tend to produce a fear that it will be carried out, a threat to perform without lawful authority any of the following acts:

1. Inflict physical harm on the person threatened or any other person;
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/or she intentionally communicates a threat or false report of a pending fire, explosion, or disaster which would endanger life or property.

C. Intimidation is a Class A offense.

#### **7.4.37 Harassment**

A. A person is guilty of harassment when a person by means of any persistent threatening, insulting, or demeaning gesture or physical conduct, including any intentional written, verbal, or electronic communication or threat directed at a person that causes a person physical harm, damages a person's property, or places a person in reasonable fear of harm to the person or the person's property. Harassment or includes retaliation against a victim or witness who

reports information about an act of harassment or intimidation.

B. Harassment is a Class B offense; however, if any of the actions listed in subsection A result in serious bodily injury, attempted suicide or suicide of the victim, the perpetrator(s) will be convicted of a Class A offense.

#### **7.4.38 Prostitution**

A. A person is guilty of prostitution if that person practices prostitution or knowingly keeps, maintains, rents, or leases any house, room, tent or other place for the purpose of prostitution, or.

B. *Prostitution* means the performance for hire, offering or agreeing to perform for hire, or soliciting or hiring a person to perform for hire, where there is an exchange of anything of value, or an offer to exchange anything of value for the following acts:

1. Sexual intercourse; or
2. Sexual contact

C. Prostitution is a Class B offense.

## CHAPTER 5. HUMAN TRAFFICKING [Ord. DOI-011 (2024)]

### SECTIONS

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#### 7.5.1 Definitions

A. *Human Trafficking* means either sex or labor trafficking as defined in Sections 7.5.2– 7.5.5.

B. *Debt bondage* means the status or condition of a debtor arising from a pledge by the debtor of the debtor’s personal services, or those of a person under the debtor’s control as a security for a debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

C. *Forced labor or services* means labor or services that are performed or provided by another individual and are obtained or maintained through any one or more of the following:

1. Threat, either implicit or explicit, scheme, plan, or pattern, or other action intended to cause the victim to believe that if they did not perform or provide the labor or services, that the victim or another individual would suffer bodily harm or physical restraint; that any fact tending or alleged fact tending to cause shame or to subject any person

to hatred, contempt, or ridicule would be exposed

2. Physically restraining or threatening to physically restrain a person;

3. Abuse or threatened abuse of the legal process;

4. Knowingly destroying, concealing, confiscating, removing or possessing any actual or purported passport or other immigration document;

5. Knowingly destroying, concealing, confiscating, removing, or possessing any actual or purported domestic documents such as driver’s license, social security card, birth certificate, or legal documents proving identity or citizenship; and/or

6. Use of blackmail.

D. *Slavery* means controlling a person through force, fraud, or coercion to exploit said person.

E. *Minor* means any Persons under the age of 18.

F. *Prostitution* means the performance for hire, or offering or agreeing to perform for hire, where there is an exchange of anything of value, or an offer to exchange anything of value for the following acts:

1. Sexual intercourse; or
2. Sexual contact

G. *Sexual intercourse* means vaginal intercourse, anal intercourse, fellatio or cunnilingus between persons regardless of

sex. Penetration, however slight, is sufficient to complete vaginal intercourse, anal intercourse or fellatio and does not require emission of semen. Penetration may be committed by an object manipulated by the actor into the genital or anal opening of the complainant's body.

H. *Sexual contact* means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

I. *John/Jane Doe* means a defendant/suspect whose identity is unknown.

J. *Victim restitution* means any payment of victim's documented cost for medical treatment, counseling, substance abuse treatment, or any financial damage caused by the act of human trafficking regardless of the race of the victim.

### **7.5.2 Labor Trafficking**

The promotion, recruitment, enticement, harboring, facilitation, transportation, obtaining, or receipt of a person by any means (including without limitation electronic or telephonic) for the purpose of debt bondage, forced labor or services, or slavery, or practices similar to slavery is prohibited. A person is guilty of labor trafficking if the individual:

A. Benefits financially or receives anything of value from knowing participation in labor trafficking, or knowing or having reason to know it is derived from an act of labor trafficking, or:

B. Promotes, recruits, entices, harbors, facilitates, transports, obtains, or receives by any means another person knowing that person may be subjected to labor trafficking; or

C. Attempts or conspires or has the intent to promote, recruit, entice, harbor, facilitate, transport, obtain, or receive by any means another person knowing that person may be subjected to labor trafficking.

### **7.5.3 Labor Trafficking of a Minor**

The promotion, recruitment, enticement, harboring, facilitation, transportation, obtaining, or receipt of a person under the age of 18 by any means (including without limitation electronic or telephonic) for the purpose of debt bondage, forced labor, or services, or slavery or practices similar to slavery, is prohibited. A person is guilty of labor trafficking of a minor if the individual:

A. Benefits financially or receives anything of value from knowing participation in labor trafficking, or knowing or having reason to know it is derived from an act of labor trafficking of a minor;

B. Promotes, recruits, entices, harbors, facilitates, transports, obtains, or receives by any means another person under the age of 18, knowing that person may be subjected to labor trafficking; or

C. Attempts or conspires or has the intent to promote, recruit, entice, harbor, facilitate, transport, obtain, or receive by any means another person under the age of 18, knowing that person may be subjected to labor trafficking

There is no limitation on the time in which a charge may be filed or prosecution may commence for any offense under this Code involving a victim who is under 18 years of age at the time of the alleged offense.

The Tribe shall file a criminal complaint against a “John/Jane Doe” where there is physical evidence (forensic interview/examination, DNA, fingerprints, false name given, etc.) that a child is a victim of a human trafficking crime but where the perpetrator is unknown.

#### **7.5.4 Sex Trafficking**

The promotion, recruitment, enticement, harboring, facilitation, transportation, obtaining, or receipt of any sexual act (sexual intercourse or contact) from a person over the age of 18 by any means (including without limitation electronic or telephonic), for the purpose of prostitution or practices similar to prostitution. A person is guilty of sex trafficking if the individual:

- A. Benefits financially or receives anything of value from knowing participation in sex trafficking of a person over the age of 18, or knowing or having reason to know it is derived from an act of sex trafficking.
- B. Promotes, recruits, entices, harbors, facilitates, transports, obtains, or receives by any means another person over the age of 18, knowing that person may be subjected to sex trafficking; or
- C. Attempts or conspires or has the intent to promote, recruit, entice, harbor, facilitate, transport, obtain, or receive by any means another person over the age of 18, knowing that person may be subjected to sex trafficking.

#### **7.5.5 Sex Trafficking of a Minor**

The promotion, recruitment, enticement, harboring, facilitation, transportation, obtaining, or receipt of any sexual act (sexual intercourse or contact) from a person under the age of 18 by any means (including without limitation electronic or telephonic), for the purpose of prostitution or practices similar to prostitution is prohibited. A person is guilty of sex trafficking of a minor if the individual commits or benefits from any one or more of the following:

- A. Benefits financially or receives anything of value from knowing participation in sex trafficking of a person under the age of 18, or knowing or having reason to know it is derived from an act of sex trafficking.
- B. Promotes, recruits, entices, harbors, transports, obtains, or receives by any means another person under the age of 18, knowing that person may be subjected to sex trafficking; or
- C. Attempts or conspires or has the intent to promote, recruit, entice, harbor, transport, obtain, or receive by any means another person under the age of 18, knowing that person may be subjected to sex trafficking.

There is no limitation on the time in which a charge may be filed, or prosecution may commence for any offense under this code involving a victim who is under 18 years of age at the time of the alleged offense.

The Tribe shall file a criminal complaint against a “John/Jane Doe” where there is physical evidence (forensic interview/examination, DNA, fingerprints, false name given, etc.) that a child is a victim

of a human trafficking crime but where the perpetrator is unknown.

#### **7.5.6 Penalties and Sentencing**

Human Trafficking is a Class A offense.

Victim Restitution is mandatory.

#### **7.5.7 Treatment**

A. Upon the defendant's guilty plea or conviction of a violation of any offense under this Code, the Judge may order an assessment of the defendant by a probation officer or other qualified service provider to ascertain a correct treatment plan for the defendant. If the victim was a minor, the Judge shall order an assessment of the defendant by a probation officer or other qualified service provider to ascertain a correct treatment plan for the defendant.

B. Upon the recommendation by the probation officer or other qualified assessment personnel, the court may order treatment, including but not limited to, substance abuse counseling, mental health, parenting, anger management, sexual offender treatment, or job training and make this order part of the defendant's probation or release. Failure to complete the term of probation or release shall constitute probation or release violation and may subject the defendant to incarceration or other sanctions.

C. Upon the defendant's guilty plea or conviction of a violation of any offense under this Code, the Judge may order an assessment of the victim by a qualified service provider. The victim may choose to not participate in the evaluation. Upon recommendations by a qualified service provider, treatment in the form of, but not limited to, substance abuse counseling, mental health, parenting, anger

management, or job training may be ordered by the Court. All expenses actually incurred will be assessed as victim's restitution and will be the responsibility of the defendant to pay. The victim may choose to not accept or participate in the services.

### **CHAPTER 6. SEX OFFENDER REGISTRATION [Res. DOI-175(2015)]**

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#### **7.6.1 Northern Cheyenne Tribal Sex Offender Registration Code**

The Tribe has enacted a separate Sex Offender Registration Code, which may be amended from time to time. The provisions of this chapter shall be interpreted with reference to the Tribe's Sex Offender Registration Code and the federal Sex Offender Registration and Notification Act (46 U.S.C. 16901 *et seq.*).

#### **7.6.2 Failure to Register as a Sex Offender**

A. A person commits failure to register as a sex offender if that person is required to register as a sex offender and fails to follow any of the provisions of Northern Cheyenne Tribal Sex Offender Registration Code.

B. Failure to register as a sex offender is a Class A offense.

C. *Penalties.*



1. A person convicted of failure to register as a sex offender is subject to a period of incarceration of not less than 180 days in custody nor more than one (1) year maximum possible term of incarceration and a fine of \$2,500 per violation. The convicted sex offender shall not be afforded early release, commutation, pardon, parole, or release on any other basis. Each sentence shall be served in custody in the entirety.

2. Each violation of a provision of the Northern Cheyenne Tribal Sex Offender Registration Code by a person not subject to the Court's criminal jurisdiction shall be subject to a civil penalty enforceable by any means not prohibited by federal law, including but not limited to the issuance of civil penalties, restitution, forfeiture or civil contempt.

3. A violation of a provision of the Northern Cheyenne Tribal Sex Offender Registration Code by a person who is not a member of the Northern Cheyenne Tribe may be subject to exclusion from the Reservation.

#### **7.6.3 Hindrance of Sex Offender Registration**

A. A person is commits hindrance of sex offender registration if he/she:

1. knowingly harbors or knowingly attempts to harbor, or knowingly assists another person in harboring or attempting to harbor a sex offender who is in violation of the

Northern Cheyenne Tribal Sex Offender Registration Code;

2. knowingly assists a sex offender in eluding a law enforcement agency that is seeking to find the sex offender to question the sex of- fender about, or to arrest the sex offender for, noncompliance with the requirements of the Northern Cheyenne Tribal Sex Offender Registration Code; or

3. provides information to a law enforcement agency regarding a sex offender which the person knows to be false.

B. Hindrance of a sex offender registration is a Class B offense.

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### **7.7.1 Arson**

A. A person who starts or maintains a fire or causes an explosion with intent to destroy or damage property, including without limitation a building, motor vehicle, crop or timber, of another is guilty of arson.

B. Arson is a Class A offense.

### **7.7.2 Reckless Burning**

A. It shall be a criminal offense for any person who kindles a fire in or near any forest, timber, rangeland or other flammable 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.

B. Reckless burning is a Class B offense.

C. A person convicted of reckless burning shall be made to make complete restitution including resource loss, suppression and rehabilitation costs.

D. *Permits Required.*

1. Agricultural burning (weeds, stubble field, irrigation ditches, etc.) in excess of one (1) acre will require a burning permit.

2. Recreational fires (i.e., campfires) and residential fires (burn barrels, trash piles, etc.) will be excluded from this section if conducted under safe burning conditions.

3. Traditional fires (sweat lodges, sundances, etc.) will be

excluded from this section at all times.

4. A burning permit shall be valid for a maximum of one (1) year, expiring December 31, and shall be issued by the Bureau of Indian Affairs and/or Tribal Forestry Department, and shall constitute permission to burn as described in this subsection.

E. 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.

### **7.7.3 Burglary**

A. A person who enters a building, or separately secured or occupied portion thereof, with intent to commit a crime therein commits a burglary, unless the premises are at the time open to the public or the defendant is licensed or privileged to enter.

1. Burglary is a Class A offense.

B. A person is guilty of burglary of a vehicle if he unlawfully enters any vehicle with intent to commit an offense therein.

1. Burglary of a vehicle is a Class A offense.

### **7.7.4 Criminal Trespass**

A. A person who, knowing that he/she is without legal authority to do so:

1. enters or remains on any land or in any building; or

2. enters or remains in any place as to which notice against trespass is given by:

- a. actual communication to the defendant;
  - b. posting in a manner reasonably likely to come to the attention of intruders; or
  - c. fencing or other enclosure manifestly designed to exclude intruders; or
3. Enters Tribal trust land in violation of an exclusion order issued by the Tribe,

is guilty of criminal trespass.

B. Criminal trespass is a Class B offense.

C. A person who, between the hours of 11 PM and 5 AM, enters into and remains in any public park, recreation area, powwow ground, rodeo ground, or any other unoccupied land held in trust for the Tribe within the exterior boundaries of the Reservation, and whose conduct does not constitute criminal trespass under Section 7.7.4.A., is guilty of criminal trespass to trust land. This subsection shall not apply to persons engaged in lawful business or responding to an emergency.

D. Criminal trespass to trust land is a Class C offense.

#### **7.7.5 Criminal Damage**

A. A person commits criminal damage by:

- 1. defacing, damaging, or in any way changing the appearance of any Tribally-owned building;
- 2. defacing, damaging, or in any way changing the appearance of any

Tribal structure, sacred site, holy grounds, or place used for worship or any religious purpose; or

3. defacing or damaging any building, structure or place used as a school or as an educational facility; or

4. defacing, damaging, or tampering with any cemetery, mortuary, or personal property of the cemetery or mortuary or other facility used for the purpose of burial or memorializing the dead.

B. Criminal damage is a Class A offense.

C. A person convicted of criminal damage must be ordered to make restitution in an amount and manner to be set by the Court. The Court shall determine the manner and amount of restitution after full consideration of the convicted person's ability to pay the restitution. Upon good cause shown by the convicted person, the Court may modify any previous order specifying the amount and manner of restitution. Full payment of the amount of restitution ordered must be made prior to the release of the Court's jurisdiction over the convicted person.

#### **7.7.6 Theft**

A. A person who takes any of the following actions commits theft:

- 1. intentionally takes, exercises unauthorized control over, or makes an unauthorized transfer of an interest in, the property of another with intent to deprive the owner thereof;

2. intentionally obtains the property of another by misrepresentation or deception;

3. intentionally obtains the property of another by threat or extortion;

4. receives, retains or disposes of the property of another knowing that it has been stolen, unless the property is received, retained or disposed of with intent to restore it to the owner;

5. controls property of another that the defendant knows to have been lost, mislaid, or delivered under a mistake, and with intent to deprive the owner thereof, and fails to take reasonable measures to restore the property to a person entitled to have it;

6. intentionally obtains services, known by the defendant to be available only for compensation, by avoiding payment for the services, or, having control over the disposition of services of another to which he/she is not entitled, knowingly diverts those services to the defendant's own benefit or to the benefit of another not entitled thereto;

7. intentionally gives false information to obtain welfare/public benefits, knowingly fails to correct misinformation that enables obtaining welfare/public benefits, or accepts and uses welfare/public benefits to which the person knows he/she is not entitled;

8. intentionally disposes of, uses, or transfers any interest in property which has been entrusted to the defendant as a parent or guardian of a minor, or for any other reason, for other than the purpose or purposes for which the property was placed in trust; or

9. Intentionally misbrands or alters any brand or mark on any livestock or another person,

is guilty of theft.

B. Conduct denominated "theft" in this Section constitutes a single offense embracing the several offenses heretofore known as embezzlement, extortion, fraud, larceny, receiving stolen property, misbranding, welfare offense, and the like.

C. It is an affirmative defense to prosecution for theft that the defendant:

1. Acted under an honest claim of right to the property or service involved or that the defendant had a right to acquire or control the property as defendant did; or

2. Obtained or exercised control over the property or service honestly and reasonably believing that the owner if present would have consented.

D. 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.

E. Theft of \$1,000.00 or more is a Class A offense. Theft of less than \$1,000.00 is a

Class B offense. Theft of less than \$500.00 is a Class C offense.

F. 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 or such evidence, and if it otherwise is proven that a theft offense has been committed, the offense shall be a Class C offense.

#### **7.7.7 Robbery**

A. A person commits a robbery if, in the commission of a theft he/she:

1. inflicts or attempts to inflict bodily injury upon another; or
2. threatens or menaces another with immediate bodily injury.

B. An act shall be deemed “in the commission of 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.

#### **7.7.8 Criminal Mischief**

A. A person commits the offense of criminal mischief if the person intentionally or recklessly:

1. injures, damages, or destroys any property of another or public property without the property owner’s consent;
2. tampers with property of another or public property so as to endanger or interfere with persons or property or its use without the property owner’s consent; or

3. damages or destroys property with the purpose to defraud an insurer.

B. *Property* as used in this section includes livestock and domestic animals.

C. Criminal mischief resulting in a victim’s loss of \$1,000.00 or more is a Class A offense. Criminal mischief resulting in a victim’s loss of less than \$1,000.00 is a Class B offense.

#### **7.7.9 Injury to Public Property**

A. A person commits injury to public property if he/she:

1. intentionally damages any Tribal or other public property; or
2. intentionally causes a substantial interruption or impairment of a public service.

B. Injury to public property resulting in a loss of \$1,000.00 or more is a Class A offense. Injury to public property resulting in a loss of less than \$1,000.00 is a Class B offense.

#### **7.7.10 Unlawful Use of a Protected Archaeological Resource**

A. It is an unlawful use of a protected archaeological resource to sell, barter, exchange, purchase, offer to sell or transport any protected archaeological resource.

B. As used in this section, *protected archaeological resource* means any material remains of past human life or activities which are of archaeological interest and at least 100 years old, including, but not be limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of

structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, funerary items, ceremonial items or any portion or piece of any of the foregoing items. Nonfossilized and fossilized paleontological specimens, or any portion or piece thereof, shall not be considered protected archaeological resources unless found in archaeological context.

C. Unlawful use of a protected archaeological resource is a Class A offense.

#### **7.7.11 Unauthorized Use of Vehicle**

A. A person commits unauthorized use of a vehicle if the person operates an automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle without the owner's consent.

B. Unauthorized Use of Vehicle is a Class B offense.

#### **7.7.12 Forgery**

A. A person who knowingly and falsely makes, completes, executes, authenticates, issues, transfers or alters any writing commits forgery.

B. Forgery resulting in a victim's loss of \$1,000.00 or more is a Class A offense. Forgery resulting in a victim's loss of less than \$1,000.00 is a Class B offense.

#### **7.7.13 Livestock Offenses**

A. A person is guilty of a livestock offense if he/she commits any of the following offenses:

1. Knowingly or negligently permits his livestock to graze or trespass on the property or permitted

grazing area of another without the permission to do so;

2. Knowingly or negligently refuses to sell, dispose of 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 permitted grazing area 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 being payable to the person or 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 Treasurer.

C. Livestock offenses are a Class A Offense.

#### **7.7.14 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.

B. Any person violating this section will be required to pay and make restitution for all damages done the owner, lessee or permit holder by way of the fence or barrier or marker being destroyed, cut, moved or altered in addition to all other penalties authorized by law.

C. Barrier offense is a Class B offense.

#### **7.7.15 Gate Offense**

A. A person is guilty of gate offense is he/she opens and does not close any previously closed gate which crosses any roadway.

B. Gate offense is a Class C offense.

#### **7.7.16 Buffalo Herd Offense**

A. It shall be unlawful for any person to kill, harass, disturb, chase, hunt, maim, damage, or otherwise interfere with any buffalo or bison owned or managed by the Northern Cheyenne Tribe.

B. It shall be unlawful for any person to enter into fenced or otherwise marked areas designed for the grazing, keeping, or use of buffalo or bison without express permission of the Tribal Council.

C. Buffalo herd offense is a Class B offense for the first offense and a Class A offense for all subsequent offenses.

C. Official management and control actions authorized by the Tribal Council and undertaken by buffalo or wildlife management officials, and law enforcement/emergency management/first responders responding to law enforcement/public safety concerns are exempt from this section and such actions shall be lawful.

### **CHAPTER 8. CRIMES AGAINST THE PUBLIC ORDER**

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### **7.8.1 Carrying Concealed Weapon**

A. Whoever carries, concealed about his/her person any weapon, unless the weapon is carried with specific governmental approval, commits carrying a concealed weapon.

1. *Weapon*, as used in this Chapter, means any type of firearm, any type of knife longer than 10” total length, a sword, a straight razor, throwing star, nunchucks, brass or other metal knuckles, stun gun, taser or an object indistinguishable from a firearm, such that a reasonable person, without specialized training in firearms, would conclude that it appears to be a firearm. The term also includes any other article or instrument possessed with the purpose to commit a criminal offense.

2. *With specific governmental approval* means the lawful possession of a firearm under the terms of a permit authorizing the carrying of concealed weapons that are issued by any tribal government, state government, or by the government of the United States, on the condition that the person carrying a weapon pursuant to such permit is not engaged in committing, or preparing to commit, any criminal offense as defined in this Code.

B. Carrying a concealed weapon is a Class B offense.

C. In addition to the penalty prescribed for such an offense, any person convicted of carrying a concealed weapon may be ordered by the Court to forfeit any such weapon to the Tribe.

### **7.8.2 Possession of Stun Gun or Taser**

A. It shall be unlawful for any person under the age of 21 to possess a stun gun or taser.



B. *Stun gun or taser*, as used in this Chapter, means

1. a device designed to propel darts or other projectiles attached to wires that, on contact, will deliver an electrical pulse capable of incapacitating a person; or
2. an electroshock weapon that uses electrical current to disrupt voluntary control of muscles causing neuromuscular incapacitation.

C. Possession of stun gun or taser is a Class B offense. Possession of a gun or taser while committing a Class A offense is a Class A offense.

### **7.8.3 Possession of Explosives**

A. Whoever possesses, transports or controls any nitroglycerin, dynamite or other dangerous explosive, unless such explosive is possessed in the prosecution of or to affect a lawful purpose, commits possession of explosives.

B. Possession of explosives is a Class B offense.

### **7.8.4 Use of a Weapon by Children**

A. A parent, guardian or other person legally responsible for the care and welfare of a child under 18 years of age, and knowingly allows such child to carry or use in public any weapon as defined in Section 7.8.1.A.1, except when such child is in the company and under the direct control of such parent, guardian, or other adult person authorized by the parent or guardian, is guilty of use of a weapon by children.

B. Use of a weapon by children is a Class B offense.

### **7.8.5 Unlawful Discharge of Firearms**

A. Whoever discharges a firearm:

1. within 500 yards of an occupied building, unless the defendant is entitled to possession of the building, authorized to do so by a person entitled to possession, or is a law enforcement officer in the performance of duty;
2. within the limits of any town, community, or village, with the exception of a law enforcement officer in the performance of duty;
3. from inside any vehicle, with the exception of a law enforcement officer in the performance of duty; or
4. across any road, trail, track or path,

commits unlawful discharge of firearms.

D. As used in this section, *firearms* shall not include BB guns or pellet guns.

E. Unlawful discharge of firearms is a Class A offense. In addition to the penalty prescribed for such an offense, any person convicted of unlawful discharge of firearms may be ordered by the Court to forfeit the firearm that was discharged to the Tribe.

B. 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 unlawful discharge of firearms.

C. Those arrested and charged under this section shall not be released from custody except at arraignment.

### **7.8.6 Carrying a Weapon in a Prohibited Place**

A. A person who intentionally carries a weapon, taser, stun gun or explosive in any of the following prohibited places commits carrying a weapon in a prohibited place:

1. any Tribal government building;
2. any United States government building;
3. any Chief Dull Knife College building; or
4. any bank, credit union, savings and loan institution, or similar institution during normal business hours. It is not an offense under this section to carry a weapon while:
  - a. using an institution's drive-up window, automatic teller machine, or unstaffed night depository; or
  - b. at or near a branch office of an institution in a grocery store, or other place unless the person is inside the enclosure used for the institution's financial services or is using the institution's financial services.

B. This Section does not apply to a law enforcement officer in the performance of duty.

C. It is not a defense that the person had a valid permit to carry a concealed weapon.

D. Carrying a weapon in a prohibited place is a Class B offense. In addition to the penalty prescribed for such an offense, any person convicted of carrying a weapon in a prohibited place may be ordered by the Court to forfeit the firearm so carried to the Tribe.

### **7.8.7 Possession or Allowing Possession of Weapon on School Property**

A. A person commits the offense of possession of a weapon on school property if the person intentionally carries or stores a weapon, stun gun, taser, or explosive on the campus or property of any school that children under the age of 18 attend, including Head Start and daycare facilities.

B. A parent, guardian or other person legally responsible for the care and welfare of a child under the age of 18 commits the offense of allowing possession of a weapon on property of any school children under the age of 18 attend if the parent or guardian intentionally permits the child to carry or store a weapon, stun gun, taser, or explosive on school property.

1. Subsection A does not apply to a law enforcement officer in the performance of duty.

2. Subsection A does not apply to any person carrying or storing a weapon for a special purpose when permission is obtained from the governing body of the school, however, no one may carry a concealed weapon on school property who does not have a valid concealed weapon permit issued by a lawful jurisdiction.

C. Possession or allowing possession of a weapon on school property is a Class A offense. In addition to the penalty prescribed for such an offense, any person convicted under this section may be ordered by the Court to forfeit the weapon to the Tribe.

#### **7.8.8 Sale, Transportation, Possession or Placement of a Destructive Device**

1. Any person who knowingly sells, offers for sale, transports or possesses any destructive device, or who places a destructive device to endanger health, life or property, commits a violation of this Section.
2. Violation of this Section is a Class A offense.
3. This section shall not apply to:
  - a. any law enforcement officer acting in the performance of duty; or
  - b. any person who possesses a valid seller's or user's permit issued by the United States government for explosive or destructive devices.
4. *Destructive device*, as used in Sections 7.8.8 and 7.8.9 means any box, package, contrivance, bomb, grenade, explosive missile, launching device, or an apparatus containing an explosive, flammable, poisonous or other dangerous or harmful weapon or substance which is created to explode, ignite or throw forth its contents after passage of time, when moved, handled, fired or opened. The term does not include fireworks sold

for community celebration in the State of Montana or on the Reservation.

#### **7.8.9 Unauthorized Possession of Substances with Intent to Make Destructive Device**

A. Any person who, without first obtaining a permit from a government agency with authority to issue such permit, possesses any substance or material with the intent to make a destructive device violates this Section.

B. Violation of this Section is a Class B offense.

#### **7.8.10 Possession of Intoxicating Beverage**

A. A person who intentionally or knowingly possesses or transports any an intoxicating beverage of 0.5% alcohol or more commits unlawful possession of an intoxicating beverage.

B. *Intoxicating beverage*, as used in this Chapter, means any alcoholic beverage with at least 0.5% alcohol and produced for human consumption, as well as products not produced for human consumption that are possessed with the intent to consume such products, including but not limited to cleaning products, cologne, and hand sanitizer.

C. Possession of an intoxicating beverage is a Class C offense. 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.

D. This Section does not apply to the lawful transport of such beverages through the Northern Cheyenne Reservation.

#### **7.8.11 Furnishing of Intoxicating Beverage**

A. Any person that intentionally or knowingly manufactures, produces, sells, gives, delivers, or otherwise furnishes an intoxicating beverage of 0.5% alcohol or more to any person commits furnishing of intoxicating beverage.

1. *Deliver* means the actual or constructive transfer of possession of any intoxicating beverage as described above, with or without consideration, whether or not there is an agency relationship.

2. The possession of 12 or more bottles or cans 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 or furnish the same to others.

B. Furnishing of intoxicating beverage is a Class C offense. If the person receiving the alcoholic beverage is under 21 years of age, it is a Class B offense.

#### **7.8.12 Intoxication**

A. Any person found publicly under the influence of an intoxicating beverage, dangerous drug or controlled substance commits intoxication.

B. Intoxication is a Class C offense.

#### **7.8.13 Sale of Dangerous Drugs**

A. Whoever knowingly sells, transfers, distributes, or otherwise furnishes any dangerous drug, or possesses dangerous drugs with intent to sell, transfer, distribute, or otherwise furnish dangerous drugs, commits sale of dangerous drugs.

1. As used in this Chapter, *dangerous drug* means any article or substance which contains any quantity of a substance classified as belonging to Schedules I, II, or III of the Federal Controlled Substance Act 21 USC § 801 *et seq.* including preparations thereof being sold, transferred or otherwise furnished for physiological and psychoactive effects, which are chemically equivalent or identical with any of the substances referred to above, unless such substance was obtained pursuant to a valid prescription or order from a licensed medical or health practitioner as defined by 21 U.S.C. § 802(21), while acting in the course of their professional practice.

2. Peyote in the Native American Church shall not be considered a controlled substance or drug under this Chapter.

B. Sale of dangerous drugs is a Class A offense. In addition to mandatory drug treatment for any conviction under this Section,

1. there shall be a mandatory minimum sentence of 6 months' imprisonment and \$2,500 fine for the first conviction under this Section, and a mandatory minimum sentence

of 1 year and \$15,000 fine for each subsequent conviction; or

2. any person who was an adult at the time of sale and or transfer and who is convicted of unlawful sale of dangerous drugs to a anyone under 18 years of age shall be sentenced to a mandatory 1 year imprisonment and a fine of \$5,000 for the first and mandatory 1 year imprisonment and a fine of \$15,000 for any subsequent convictions.

3. Any person convicted under this Section who is over 18 years of age and not an enrolled member of the Tribe may also be permanently banished from the Reservation.

C. Marijuana business activities undertaken by the Tribal government or an authorized Tribal entity, pursuant to a resolution or ordinance of the Tribal Council, shall not constitute a violation of this Section provided that the activity conforms to the Tribal Council's authorization.

#### **7.8.14 Possession of Dangerous Drugs**

A. A person commits possession of dangerous drugs if he/she possesses or uses any of the dangerous drugs defined in Section 7.8.13.A.1 of this Code.

B. As used in this Title,

1. *possession* means actual or constructive possession, including when defendant has dominion and control over the substance considering the totality of the situation such as physical proximity.

2. *personal-use marijuana* is defined as up to six (6) marijuana plants and one (1) ounce of any other form of marijuana.

C. Possession of dangerous drugs is a Class A offense, except that an offense solely involving cultivation or possession of personal-use marijuana by a person twenty-one (21) years of age or older is not a violation of this Section.

D. In addition to mandatory drug treatment for any Class A conviction under this Section,

1. there shall be a mandatory minimum sentence of 6 months' imprisonment and \$2,500 fine for the first conviction under this Section, and a mandatory minimum sentence of 1 year imprisonment and \$5,000 fine for the second conviction, and a mandatory minimum sentence of 1 year and \$15,000 fine for each subsequent conviction.

2. Any person convicted under this Section who is over 18 years of age and not an enrolled member of the Tribe may also be permanently banished from the Reservation.

E. Nothing in this Section shall

1. prohibit a residential or commercial property or business owner from prohibiting the cultivation, use, consumption or possession of personal-use marijuana within the structure of the premises or within the entire property;

2. prohibit an employer from disciplining or discharging an employee for possessing, consuming, cultivating, using or being under the influence of marijuana while at the place of employment during the fulfillment of employment obligations;

3. prohibit prosecution of a person under the age of 21 for a marijuana-related offense;

4. prohibit prosecution of a person for offenses involving possession or cultivation of marijuana in excess of the personal-use limit;

5. prohibit the prosecution of a person for driving under the influence of marijuana; or

6. prohibit the prosecution of a person for using or consuming marijuana in a public place.

F. Marijuana business activities undertaken by the Tribal government or an authorized Tribal entity, pursuant to a resolution or ordinance of the Tribal Council, shall not constitute a violation of this Section provided that the activity conforms to the Tribal Council's authorization.

#### **7.8.15 Production or Manufacture of Dangerous Drugs**

A. A person commits production or manufacture of dangerous drugs if the person intentionally or knowingly produces, manufactures, prepares, cultivates, compounds, or processes the dangerous drugs defined in Section 7.8.13.A.1 of this Code.

B. Production or manufacture of dangerous drugs is a Class A offense.

C. Cultivation of personal-use marijuana by a person 21 years of age or older shall not constitute a violation of this Section.

D. Cultivation of marijuana exceeding the personal-use limit or by person under 21 years of age is prohibited by this Section.

E. There shall be a mandatory minimum sentence of 6 months' imprisonment and \$2,500 fine for the first conviction under this Section, and a mandatory minimum sentence of 1 year and \$15,000 fine for each subsequent conviction.

F. Any person not an enrolled member of the Tribe over 18 years of age convicted under this Section may also be permanently banished from the Reservation.

G. Marijuana business activities undertaken by the Tribal government or an authorized Tribal entity, pursuant to a resolution or ordinance of the Tribal Council, shall not constitute a violation of this Section provided that the activity conforms to the Tribal Council's authorization.

#### **7.8.16 Possession of Precursors to Dangerous Drugs**

A. A person commits unlawful possession of precursors to dangerous drugs if he/she possesses any of the following substances or combinations of the following, if there is evidence that he/she possessed them with the intent of manufacturing dangerous drugs.

B. *Precursor* means the principal compound commonly used or produced primarily for use and that is an immediate

chemical intermediary used or likely to be used in the manufacture of a dangerous drug, the control of which is necessary to prevent, curtail, or limit manufacture of dangerous drugs. Suspect precursors include but are not limited to:

1. phenyl-2-propanone (phenylacetone);
2. piperidine in conjunction with cyclohexanone;
3. ephedrine [methamphetamine precursor];
4. lead acetate;
5. methylamine;
6. methylformamide;
7. n-methylephedrine;
8. phenylpropanolamine;
9. pseudoephedrine;
10. anhydrous ammonia;
11. hydriodic acid;
12. red phosphorus;
13. iodine in conjunction with ephedrine, pseudoephedrine, or red phosphorus; and
14. lithium in conjunction with anhydrous ammonia.

C. Possession of precursor to dangerous drugs is a Class A offense.

D. There shall be a mandatory minimum sentence of 6 months' imprisonment and \$2,500 fine for the first conviction under this Section, and a mandatory minimum sentence

of 1 year and \$15,000 fine for each subsequent conviction.

E. Any person convicted under this Section who is over 18 years of age and not an enrolled member of the Tribe may also be permanently banished from the Reservation.

#### **7.8.17 Abuse of Toxic Substances**

A. A person commits abuse of a toxic substance if he/she inhales or ingests or possesses with the purpose to inhale or ingest, for the purposes of altering his/her mental or physical state, any substance with toxic effects that is not manufactured for human consumption or inhalation.

B. For purposes of this Section, *toxic substances* include, but are not limited to, glue, fingernail polish, paint, paint thinners, petroleum products, aerosol propellants, or chemical solvents containing toluene, benzene, xylene, any nitrate, butyl nitrate, nitrous oxide, or other aromatic hydrocarbon, or any other similar substance declared to, or known to have, potential for abuse and/or toxic effect on the central nervous system.

C. Abuse of toxic substances is a Class C offense.

#### **7.8.18 Seizures and Forfeitures Related to Drugs**

A. The following property is subject to forfeiture to the Northern Cheyenne Tribal Court:

1. All dangerous drugs seized pursuant to this Chapter.
2. All money, raw materials, products, and equipment of any kind that is used or intended for use in manufacturing, preparing,

cultivating, compounding processing, production, delivering, importing, or exporting any drug in violation of Sections 7.8.13 to 7.8.17.

3. All property used or intended for use as a container for anything listed in A.1. or A.2. above.

4. All conveyances which are used or intended for use in unlawfully transporting or in any manner facilitating the transportation of anything listed in A.1. or A.2. above.

5. All conveyances in which a drug is unlawfully kept, deposited, or concealed.

6. All books, records, and research products and materials, including formulas, microfilm, tapes, and data that are used or intended for use in violation of Sections 7.8.13 to 7.8.17.

7. All equipment, products, and materials of any kind that are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a drug.

8. Everything of value furnished or intended to be furnished in exchange for a drug in violation of this Chapter; all proceeds traceable to such an exchange; and all money, negotiable instruments, and securities used or intended to be used to

facilitate any violation of Sections 7.8.13 to 7.8.17.

9. All real property, including any right, title, and interest (including any leasehold interest) in the whole of any lot or tract of land and any appurtenances or improvements, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of Sections 7.8.13 to 7.8.17 punishable by a year or more imprisonment.

B. *Exceptions to forfeiture.*

1. Except for drugs seized pursuant to this Chapter, property forfeiture may not be sought relating to violations of Sections 7.8.13 to 7.8.17 that are Class B or C offenses. Personal-use marijuana may not be seized and forfeiture may not be sought solely related to personal-use marijuana; however marijuana amounts cultivated or possessed in excess of the personal-use limit or in violation of Sections 7.8.13 and 7.8.15 are subject to seizure and forfeiture.

2. No conveyance used by a person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this Section unless it appears that the owner or other person in charge of the conveyance is a consenting party to or knowledgeable of a violation of Sections 7.8.13 to 7.8.17.



3. No conveyance is subject to forfeiture under this Section because of any act or omission established by the owner of the conveyance to have been committed or omitted without his/her knowledge or consent.

4. A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he/she neither had knowledge of nor consented to any violation of this section.

C. *When property may be seized.*

1. A law enforcement officer who has probable cause to make an arrest for a violation of Sections 7.8.13 to 7.8.17, probable cause to believe that a conveyance has been used or is intended to be used to unlawfully transport a drug or probable cause to believe that a conveyance has been used to keep, deposit, or conceal a drug shall seize the conveyance so used or intended to be used. The officer shall hold a conveyance so seized as evidence until a forfeiture is declared or release is ordered.

2. All property subject to forfeiture under this Section may be seized by a law enforcement officer under a search warrant issued by the Tribal Court. Seizure without a warrant may be made if:

- a. the seizure is made incident to an arrest or a search under a search warrant issued for another purpose or an

inspection under an administration inspection warrant;

b. the property subject to seizure has been the subject of a prior judgment in favor of the Tribe in a criminal proceeding or a forfeiture proceeding based on this Code;

c. the law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety;

d. the law enforcement officer has probable cause to believe that the property was issued or is intended to be used in violation of a crime; or

e. the law enforcement officer has probable cause to believe that the property will be removed from the Northern Cheyenne Reservation if not seized at that time.

D. *Forfeiture of property.*

1. Petition to institute forfeiture proceedings:

- a. Any law enforcement officer or agency that seizes any property pursuant to this Section shall, no later than 45 days after conviction, file a civil petition to institute forfeiture proceedings with the clerk of the Tribal Court.

- b. The clerk shall issue a summons at the request of the petitioning party who shall cause the same to be served upon all owners or claimants of the property.
- 2. Answer to allegations concerning the use of property:
  - a. Within 20 days after the service of the petition and summons, the owner or claimant of the property shall file an answer to the allegations.
  - b. No extension of time for filing the answer may be granted, and failure to answer within the specified time bars the owner or claimant from presenting any evidence at any subsequent hearing.
- 3. Procedure following answer or expiration of time for answering:
  - a. There is a rebuttable presumption of forfeiture of property.
  - b. If an answer to the petition is not filed within 20 days after the service of the petition and summons, the Court, upon motion, shall order the property forfeited to the Tribe.
  - c. If an answer is timely filed, the forfeiture proceeding shall be set for hearing, without a jury, not more than 60 days after the answer is filed.

4. Proof required or permitted at hearing to rebut the presumption of forfeiture:

a. An owner of the property, who has an answer on file, must prove either:

- 1. that the conveyance was not used for the purpose charged; or
- 2. that the use of the property occurred without his/her knowledge or consent.

b. A claimant of a secured interest in the property, who has an answer on file, must prove that his/her interest is bona fide and that it was created without the knowledge that the property was being used or was to be used for the purpose charged.

E. *Disposition of property following hearing.*

- 1. If the Court finds that the property was not used for the purpose charged or that the property was used without the knowledge or consent of the owner, it shall order the property released to the owner of record.
- 2. If the Court finds that the property was used for the purpose charged with the knowledge or consent of the owner, the property shall be disposed of as follows:

- a. If proper proof of his/her claim is presented at the hearing by the holder of a security interest, the Court shall order the property released to the holder of the security interest with all title, right, and interest to the owner extinguished. If the value of the property is more than the security interest, the additional value shall be returned to the Northern Cheyenne Tribal Court.
  - b. If there is no security interest, the Court shall order the property forfeited to the Tribe.
3. Forfeited property may be retained for official Tribal Government use as determined by the Tribal President.
  4. In the event forfeited property is sold, the net proceeds of the sale must be remitted to the Treasurer of the Northern Cheyenne Tribe to be divided equally and used for official governmental purposes by the following:
    - a. One-half to the Tribal Court Account.
    - b. One-half to the Northern Cheyenne Criminal Investigations or other Tribally-run law enforcement agency to be used for drug enforcement purposes.

#### **7.8.19 Drug Paraphernalia**

A. It shall be unlawful for any person to possess, sell, trade, bargain or offer for sale drug paraphernalia.

1. *Drug paraphernalia* means any equipment, product, or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance, possession of which is unlawful under this Chapter. It includes items primarily intended or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, hashish oil, PCP, methamphetamine, or amphetamines into the human body.

2. In determining whether an item constitutes drug paraphernalia, in addition to all other logically relevant factors, the existence and scope of legitimate uses of the item in the community, and/or expert testimony concerning its use, may be considered.

B. This section shall not apply to:

1. any person authorized by applicable law to manufacture, possess, or distribute such items;
2. any item that is traditionally intended for use with tobacco products; or

3. any item possessed or used solely in connection with lawful personal-use of marijuana.

C. Violation of this Section is a Class B offense.

#### **7.8.20 Imitation Dangerous Drug Offenses**

A. A person commits sale of an imitation dangerous drug if he/she intentionally sells, barter, exchanges, gives away, or offers to sell, barter, exchange, or give away any imitation dangerous drug.

B. A person commits the offense of possession of an imitation dangerous drug with purpose to sell if he/she possesses with purpose to sell any imitation dangerous drug.

C. A person commits the offense of criminal advertisement of an imitation dangerous drug if he/she intentionally places in any newspaper, magazine, handbill, or other publication or posts or distributes any advertisement or solicitation to promote the manufacture, sale, exchange, or distribution of an imitation dangerous drug.

D. A person commits the offense of criminal manufacture of an imitation dangerous drug if he/she intentionally manufactures, prepares, or cultivates any imitation dangerous drug.

E. A conviction of any offense under subsections A through D is a Class A offense.

F. *Imitation dangerous drug* means a substance that is not a dangerous drug but that is expressly or impliedly represented to be a dangerous drug or to stimulate the effect of a dangerous drug and the appearance of which, including the color, shape, size and markings,

would lead a reasonable person to believe that the substance is a dangerous drug.

G. This Section does not apply to:

1. a person authorized by rules adopted by a state board of pharmacy to possess with purpose to sell or sell imitation dangerous drugs;

2. law enforcement personnel selling or possessing with purpose to sell imitation dangerous drugs while acting within the scope of their employment; and

3. a person registered to sell or possess with the purpose to sell imitation dangerous drugs for use as a placebo, by that person or any other person so registered, in the course of professional practice or research.

#### **7.8.21 Unlawful Sale of Prescription Medication**

A. A person or business licensed to sell medication that requires a prescription from a medical provider that knowingly sells or transfers prescription medication in the absence of a bona fide prescription commits unlawful sale of prescription medication.

B. A person not licensed to sell medication that requires a prescription from a medical provider and sells prescription medication commits unlawful sale of prescription medication.

C. Unlawful sale of prescription medication is a Class A offense.

### **7.8.22 Drug/Wellness Court Program**

Nothing in this Chapter shall limit the authority of the Court to develop and issue incentives, sanctions, sentences, and/or penalties for violations of this Code that follow the guidelines and policies of the Court's established drug court/healing to wellness court program(s) or any similar diversion program intended to support individuals whose substance/alcohol use dependency contributes to the individual's criminal activity.

### **7.8.23 Disorderly Conduct**

A. A person commits disorderly conduct if he/she, with intent to harass, alarm or annoy another person, or in reckless disregard of the fact that another person is harassed, annoyed or alarmed by his/her behavior:

1. engages in fighting, or in violent or threatening behavior;
2. makes loud, unusual or unreasonable noise;
3. obstructs vehicular or pedestrian traffic, or the use of a public facility;
4. disturbs any lawful assembly or public meeting or event, including public Tribal Council or other Tribal government meetings;
5. persistently follows another person; or
6. creates a hazardous or extremely offensive condition by any act which serves no legitimate purpose.

B. A person commits disorderly conduct if he/she knowingly violates any curfew mandate ordained by the Tribal Council.

C. The standards which shall be considered in determining whether a noise is unreasonable under subsection A.2. shall include the following:

1. the volume of noise;
2. the duration of the noise;
3. whether the noise is recurrent;
4. whether the nature of the noise is usual or unusual;
5. whether the noise is produced by a commercial or noncommercial activity;
6. the density of the inhabitation of the area within which the noise emanates;
7. the time of the day or night the noise occurs; and
8. the public benefit derived from the source of the noise.

D. Disorderly conduct is a Class B offense.

### **7.8.24 Cruelty to Animals**

A. Whoever intentionally or recklessly subjects any domesticated animal to cruel mistreatment is guilty of cruelty to animals.

B. Cruelty to animals is a Class C offense for the first offense and a Class B offense for every subsequent offense.

### **7.8.25 Spying by Electronic Device**

A. It is unlawful for any person to intentionally cause an electronic device to enter the property of another to secretly spy or attempt to spy into any governmental or private building, structure, or other enclosure without lawful governmental authority.

B. Unlawful spying by electronic device is a Class B offense.

### **7.8.26 Privacy in Communications**

A. A person commits the offense of violating privacy in communications if the person intentionally:

1. With the intent to terrify, intimidate, threaten, harass, annoy, or offend, communicates with a person by electronic communication and uses obscene, lewd, or profane language, suggests a lewd or lascivious act, or threatens to inflict injury or physical harm to the person or property of the person. The use of obscene, lewd, or profane language or the making of a threat or lewd or lascivious suggestions is prima facie evidence of an intent to terrify, intimidate, threaten, harass, annoy, or offend.

2. Records or causes to be recorded a conversation by use of hidden electronic or mechanical device that reproduces a human conversation without the knowledge of all parties to the conversation. This subsection A.2. does not apply to:

- a. elected or appointed public officials or public employees when the transcription or

recording is done in the performance of official duty;

- b. persons speaking at public meetings;

- c. persons given warning of the transcription or recording, or if one person provides the warning, either party may record; or

- d. a government law enforcement or health care agency if the recording is of a health care emergency telephone communication made to the facility or agency.

B. The first conviction of violating privacy in communications is a Class B offense and any subsequent conviction is a Class A offense.

### **7.8.27 Unlawful Gambling**

A. A person is guilty of unlawful gambling who

1. Conducts a wagering pool or lottery for his/her own profit; or

2. Receives wagers for or on behalf of another person for his/her own profit; or

3. Alone or with others owns, controls, manages, or finances a gambling business; or

4. Knowingly leases or otherwise permits a place to be regularly used to carry on a gambling business or maintain a gambling house; or

5. Maintains and operates an unlicensed Class II or Class III gaming device or business for his/her own profit.
- B. Gambling is a Class A offense.
- C. Unlawful gambling does not include:
1. Lawful contests of speed, strength, or endurance in which awards are made only to entrants or to the owners of entrants;
  2. Traditional social and cultural games (such as hand games) of the Tribe;
  3. Lawful business transactions;
  4. Bingo, raffles or other like activities conducted by a religious, charitable, or other non-profit organization; or
  5. Any gaming activity licensed by the Tribe pursuant to the Northern Cheyenne Tribal Gaming Ordinance DOI-028 (2011).

#### **7.8.28 Contributing to The Delinquency of a Minor**

Any person, including any parent or other person with lawful custody of a minor, who intentionally, negligently, or recklessly causes, encourages, contributes to or aids a minor in committing a criminal offense is guilty of a Class A offense.

#### **7.8.29 Obscenity**

A. An adult commits the offense of obscenity when, with knowledge of the obscene nature of the material, the person intentionally:

1. sells, delivers, or provides or offers or agrees to sell, deliver, or provide any obscene writing, picture, recording, video or other representation or embodiment of the obscene to any minor;
2. presents, directs or participates in an obscene activity with a minor;
3. publishes, exhibits, or otherwise makes available anything obscene to a minor;
4. performs an obscene act or otherwise presents an obscene exhibition of the person's body to anyone under 18 years of age;
5. creates, buys, procures, or possesses obscene matter or material with the purpose to disseminate it to anyone under 18 years of age; or
6. advertises or otherwise promotes the sale of obscene material or materials represented or held out by the person to be obscene.

B. *Obscene* means a representation or description of sexual acts, masturbation, excretory functions, or lewd exhibition of genitals, actual, simulated, or animation, that appeals to the prurient interest in sex based on contemporary community standard and lacks serious literary, artistic, political, or scientific value.

C. In any prosecution for an offense under this section, evidence is admissible to show:

1. the predominant appeal of the material and what effect, if any, it

would probably have on the behavior of people;

2. the artistic, literary, scientific, educational, or other merits of the material;

3. the degree of public acceptance of the material in the community;

4. the appeal to prurient interest or absence of that appeal in advertising or other promotion of the material; or

5. the purpose of the author, creator, publisher, or disseminator

D. Obscenity is a Class A offense.

#### **7.8.30 Sanitation Offense**

A. A person commits a sanitation offense if he/she fails to properly dispose of all body wastes, garbage, trash or other waste materials.

B. Sanitation offense is a Class B offense.

C. The Court has discretion to take any action deemed necessary under the circumstances to safeguard the health or well-being of any community, family, person or property to remedy a sanitation offense.

#### **7.8.31 Maintaining a Public Nuisance**

A. A person commits maintaining a public nuisance if, acting in such a manner or creating a situation which may be adjudicated a general nuisance, or permitting property under his/her control to fall into a condition as to injure or endanger the safety, health, comfort or property of his/her neighbors.

B. A person commits maintaining a public nuisance by keeping, maintaining, or permitting on any lot or parcel of land any animal which by sound or cry disturbs the peace and comfort of any neighbor or interferes with any person in the reasonable enjoyment of life and property.

C. Maintaining a public nuisance is a Class C offense.

D. The Court has discretion to take any action deemed necessary under the circumstances to safeguard the health or well-being of any community, family, person or property to remedy a public nuisance.

#### **7.8.32 Littering**

A. A person is guilty of littering if he/she:

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. Throws or deposits upon any roadway any glass bottles, glass, nails, tacks, wire or any other substance likely to injure any person, animal or vehicle upon such roadway; or

3. Stores or keeps any unserviceable vehicle, appliance or implement within any town or village, unless he has a permit from a Tribal authority to maintain a junkyard; or



4. Allows any abandoned building to remain on land he owns or controls within any town or village, unless he has a permit from a Tribal authority allowing him to maintain an abandoned building.

B. Littering is a Class B offense.

### **7.8.33 Dangerous Dog Offense**

A. Any person who allows or permits his or her dangerous dog to

1. run at large,
2. to be in or upon any public place or premises other than those private premises of the owner of said dog,
3. to be in or upon the private premises of other persons without their consent, or
4. to attack, bite or chase someone other than the dog owner or a member of the dog owner's household,

commits a dangerous dog offense.

B. "Dangerous dog" is defined as a

1. a canine;
2. that is on the Reservation;
3. that is not contained, whether by residence, fence, chain or other reasonable containment measure;
4. that has bitten someone other than the dog owner or member of the dog owner's household;

5. is considered to pose a serious and imminent threat to the safety of a person(s); and

6. is not a service animal as defined by federal law.

C. Dangerous dog offense is a Class C offense for the first offense, and a Class B offense for subsequent offenses by the same owner.

### **7.8.34 Criminal Gang Activity**

A. For purposes of this Section, the following definitions shall apply:

1. *Criminal Gang* means an ongoing formal or informal association of persons whose members or associates individually or collectively engage in the commission, attempted commission, facilitation or solicitation of any criminal act defined under this Code and who has at least one individual who is a criminal gang member.

2. *Criminal Gang Member* means an individual to whom at least two of the following seven criteria that indicate criminal gang membership apply:

- a. self-proclamation;
- b. witness testimony or official statement;
- c. written or electronic correspondence;
- d. paraphernalia or photographs;

- e. tattoos;
- f. clothing or colors; or
- g. any other evidence of gang membership.

B. Evidence of gang membership including but not limited to graffiti, gang-related paraphernalia, hand signals, tattoos, clothing or colors may be submitted into evidence in any case brought under this section with proper foundation according to applicable Rules of Evidence.

C. A person commits the offense of Criminal Gang Activity if he or she does any of the following:

- 1. Intentionally organizes, manages, directs or supervises a criminal gang with the intent to promote or further the criminal objectives of the criminal gang; or
- 2. Knowingly entices or induces others to engage in violence or intimidation to promote or further the criminal objectives of a criminal gang; or
- 3. Furnishes advice or direction in the conduct, financing or management of a criminal gang's affairs with the intent to promote or further the criminal objectives of a criminal gang; or
- 4. Hires, engages or uses a minor for any conduct preparatory to or in completion of any offense in this section; or

- 5. Commits any offense under this Law & Order Code with the intent to promote or further the objectives of a criminal gang,

D. Criminal Gang Activity is a Class B offense for the first offense, and a Class A offense for each subsequent offense.

E. The Court may order restitution to any victims of offenses committed under this Section.

## CHAPTER 9. OFFENSES INVOLVING GOVERNMENTAL PROCESSES

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### **7.9.1 Bribery**

A. Whoever intentionally offers, gives, or agrees to give to another, or solicits, accepts, or agrees to accept from another, anything of value as consideration:

1. to influence the recipient's official action as a public servant, or
2. to induce the recipient's violation of a known legal duty as a public servant,

is guilty of bribery.

B. Bribery is a Class B offense.

C. For purposes of this Section, *value* means one or more items that in the aggregate are worth at least \$100.

D. It is not a defense to prosecution under this Section that a person whom the actor sought to influence or induce was not qualified to act in the desired way due to lack of authority, jurisdiction or any other reason.

### **7.9.2 Interfering with Elections**

A. A person is guilty of interfering with elections who:

1. coerces, threatens, injures or intimidates another person with respect to voting, qualifying to vote, qualifying or campaigning as or for a candidate for elective office, or qualifying or acting as an election official, in any primary, special, or general election of the Tribe; or
2. in connection with any election of the Tribe, knowingly makes or induces any false voting registration; or

3. in connection with any election of the Tribe, offers, gives, or agrees to give anything of pecuniary value to another person as consideration for the recipient's voting or withholding his/her vote or voting for or against any candidate or issue or for such conduct by another; or

4. solicits, accepts, or agrees to accept anything of pecuniary value as consideration for conduct prohibited under Subsections A.2. or A.3 or

5. commits election fraud as set forth in Section 23 of the Tribe's Election Ordinance; or

6. otherwise obstructs or interferes with the lawful conduct of an election of the Tribe or registration therefor.

B. Community meals presented by a candidate which are open to the entire community are not unlawful under this Section.

C. Interfering with elections in violation of subsections A.1., A.2., A.3., A.4. or A.5. is a Class A offense.

D. Interfering with elections in violation of subsection A.6. is a Class B offense.

### **7.9.3 Protection of Government Officials, Employees and Law Enforcement Officers**

A. A person violates this section who forcibly assaults, intimidates or interferes with:

1. any judge, court employee, witness or juror of any court created by the Tribe, the United States, or the State of Montana;

2. any elected or appointed official or employee of the Tribe, the United States or the State of Montana; or

3. any law enforcement officer.

B. *Assault* as used in this Section is defined in Chapter 4.

C. *Intimidation* as used in this Section means communicating, with the purpose to cause another to perform or to omit the performance of any act, under circumstances which reasonably tend to produce a fear that it will be carried out, 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

2. subject any person to physical confinement or restraint.

D. *Interfere* as used in this Section means preventing or delaying the performance of official duties without lawful authority.

E. *Law enforcement officer* means a person who by virtue of the person's office or public employment carries out law enforcement duties.

F. Violation of this Section is a Class A offense.

#### **7.9.4 Harming A Police Dog**

A. A person commits the offense of harming a police dog if the person intentionally kills or injures a police dog being used by a:

1. law enforcement officer in discharging or attempting to discharge a legal duty in a reasonable and proper manner; or

2. person while the person is under the control of and acting under the direction of an officer of an official law enforcement agency during the performance of the agency's law enforcement or search and rescue duties.

B. Harming a police dog is a Class B offense.

#### **7.9.5 Hindering Law Enforcement**

A. A person is guilty of hindering law enforcement if he/she intentionally interferes with, hinders, delays or prevents the discovery, arrest, prosecution, conviction, or punishment in any way of himself/herself or another for the commission of an offense.

B. Hindering law enforcement is a Class B offense.

#### **7.9.6 Failure to Heed Emergency Lights**

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. Failure to heed emergency lights is a Class A offense.

### **7.9.7 Eluding**

A. A person commits the offense of eluding 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.

B. Eluding is a Class A offense.

### **7.9.8 Resisting Arrest**

A. Whoever, with the intent to prevent a law enforcement officer from effecting an arrest:

1. flees from a law enforcement officer after being told by an officer that he/she is under arrest;
2. uses or threatens to use physical force or violence against the law enforcement officer or another; or
3. creates a substantial risk of bodily harm to the officer or any other person, or employs means justifying substantial force to overcome the resistance

commits resisting arrest.

B. It is a defense to resisting arrest if the force was clearly excessive and could have led to serious injury of the person law enforcement is attempting to arrest.

C. Resisting arrest is a Class B offense for the first and Class A offense for the second offense and subsequent offenses.

### **7.9.9 Perjury**

A. A person who, in any official proceeding of the Tribe, makes a false

statement or interpretation under oath or equivalent affirmation, or swears or affirms the truth of a statement or interpretation previously made, when the statement or interpretation is material and the defendant does not believe it to be true, is guilty of perjury.

B. Perjury is a Class B offense.

### **7.9.10 Tampering with Witness**

A. A person is guilty of tampering with witnesses if:

1. Believing that an official proceeding or investigation is pending or about to be instituted, he/she attempts to induce or otherwise cause a person to:

- a. Testify or inform falsely;
- b. Withhold any testimony, information, document or thing;
- c. Avoid legal process summoning him/her to testify or supply evidence; or
- d. Absent him/herself from any proceeding or investigation to which he has been legally summoned;

2. He/she harms another by an unlawful act in retaliation for anything done by another in his/her capacity as a witness or informant; or

3. He/she solicits, accepts or agrees to accept any benefit in consideration of his/her doing any of the things specified in this section.

B. Tampering with a witness is a Class A offense.

#### **7.9.11 Tampering with Evidence**

A. A person is guilty of tampering with evidence if, believing that an official proceeding or investigation is pending or about to be instituted, he/she:

1. Alters, destroys, conceals or removes any record, document, or thing with purpose to impair its verity or availability in such proceeding or investigation; or
2. 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.

B. Tampering with evidence is a Class B offense.

#### **7.9.12 Criminal Contempt**

A. Criminal contempt may be declared by any judge of the Northern Cheyenne Tribe for:

1. misbehavior of any person in a court proceeding; or
2. disobedience or resistance to any process, order, subpoena, warrant or command of the Court.

B. Criminal contempt is a Class C offense.

#### **7.9.13 Violation of a Temporary or Permanent Order of Protection**

A. A person commits the offense of violating an order of protection when he/she:

1. Is the subject of a protection order issued by any court;
2. Has notice of the order; and
3. Engages in any conduct proscribed by the protection order or fails to meet any requirement of the protection order.

B. *Protection order* means any order issued by any court of competent jurisdiction to protect person(s) by proscribing and/or requiring certain conduct of another. A protection order may include a temporary protection order as provided under Section 4.4.9 of this Code and may also be known or referred to as a restraining order.

C. Violation of a protection order is a Class A offense.

D. Violation of a protection order, including any prohibition against entering a residence, is not excused by the consent or permission of the person whom the protection order is intended to protect or any other person.

E. All provisions of a protection order shall remain in full force and effect until the order terminates or is modified by a court of competent jurisdiction.

F. *Procedural requirements.* In the event a law enforcement officer is aware of a violation of a protection order, the officer shall submit a signed report of such violation and any statement from the object of the protection order to the Tribal Court as promptly as possible and take any other appropriate action to protect the object of the protection order. Upon receipt of such report, the Tribal Court shall issue a warrant for the

arrest of the person who violated the protection order upon finding that the order was violated.

#### **7.9.14 Escape**

A. A person who unlawfully removes himself/herself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited period is guilty of escape.

B. *Official detention* does not include supervision of probation or parole, or constraint incidental to release on bail.

C. Escape is a Class A offense.

#### **7.9.15 False Reports to a Law Enforcement, Fire or Emergency Officer**

A. A person commits the offense of giving false reports to a law enforcement, fire or emergency officer by intentionally:

1. giving false information with the purpose to implicate another; or
2. reporting to an incident knowing that the alleged offense or incident did not occur.

B. False reports to law enforcement, fire or emergency officer is a Class B offense. The second and any subsequent conviction is a Class A offense.

#### **7.9.16 Impersonation of Public Servant**

A. A person commits the offense of impersonating a public servant if the person falsely pretends to hold a position in the public service with the purpose to induce another individual to submit to the pretended official authority or otherwise to act in reliance upon that pretense to the individual's prejudice.

B. Impersonating a public servant is a Class B offense, except that impersonating a law enforcement officer is a Class A offense.

#### **7.9.17 Obstructing Justice**

A. A person commits the offense of obstructing justice if the person knowingly:

1. harbors or conceals an offender;
2. warns an offender of impending discovery or arrest, except this does not apply to a warning given in connection with an effort to bring an offender into compliance with the law;
3. provides an offender with money, transportation, weapon, disguise, or other means of avoiding discovery or arrest;
4. prevents or obstructs by means of force, deception, or intimidation anyone from performing an act that might aid in the discovery or arrest of an offender;
5. suppresses by act of concealment, alteration, or destruction any physical evidence that might aid in the discovery or arrest of an offender;
6. aids an offender who is subject to official detention to escape from official detention; or
7. produces, transfers, or possesses a false identification document with intent to deceive as to his/her real identity.

B. For the purpose of this Section, *an offender* means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

C. *False identification document* means a document of a type intended or commonly accepted for the purposes of identification of individuals that

1. is not issued by or under the authority of a governmental entity; or
2. was issued by or under the authority of a governmental entity but was subsequently altered for purposes of deceit; or
3. was issued by or under the authority of a governmental entity but contains identifying information belonging to a person other than the person producing, transferring or possessing the document.

D. Conviction under this section is a Class A offense.

#### **7.9.18 Public Health Offense**

A. A person is guilty of a public health offense if he/she:

1. Violates any rules or regulations enforced by the Department of Public Health, or Indian Health Service, as adopted by Tribal Council ordinances, or any Indian group, organization, or committee for tribal celebrations or gatherings or
2. Violates any Tribal Council ordinances or resolution prohibiting or requiring conduct pertaining to

public health and/or the health, safety and welfare of Tribal members and other residents living within the exterior boundaries of the Northern Cheyenne Reservation.

B. Public health offense is a Class B offense.

C. The Court has discretion to take any action deemed necessary under the circumstances to safeguard the health or well-being of any community, family, person or property to remedy a sanitation offense.

#### **7.9.19 Retaliation for Past Official Action**

A. A person commits retaliation for past official action if he/she harms any person by any unlawful act in retaliation for anything done lawfully by another person in his/her capacity as a public official.

B. Retaliation for past official action is a Class B offense.

#### **7.9.20 Official Misconduct**

A. A person commits official misconduct if:

1. Being a public official, and with intent to benefit himself or herself or another person or harm another person, knowingly commits an unauthorized act which purports to be an act of his/her office, or knowingly refrains from performing a nondiscretionary duty imposed on him/her by law or clearly inherent in the nature of his/her office; or
2. Being a public official and knowing that official action is contemplated or in reliance on information which he has acquired by



virtue of his/her office or from another public servant, which information has not been made public, he/she:

- 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
- c. knowingly aids another to do any of the foregoing.

B. Official misconduct is a Class B offense.

## CHAPTER 10. TRAFFIC OFFENSES

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### 7.10.1 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. This Chapter will give authority and responsibility to the law enforcement agencies recognized by the Northern Cheyenne Tribe and Reservation to enforce the Northern Cheyenne traffic offenses in this Chapter.

### 7.10.2 Jurisdiction

A. Law enforcement authorities on the Reservation recognized by the Northern Cheyenne Tribal Council are authorized to enforce this Chapter. Federal officials, including the United States Department of Justice and Department of the Interior are hereby authorized to enforce this Chapter.

B. Police officers may make reasonable inspection of vehicle registration receipts and other documents required to be carried in or for a vehicle traveling on the public highways and other public roads of Montana and through the Northern Cheyenne Reservation.

C. Whenever any police officer 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.

### 7.10.3 Definitions

A. *ATV* means a motorized off-highway vehicle including but not limited to four-wheelers, e-bikes, and dirt bikes.

B. *Controlled substance* means a substance classified as belonging to Schedules I, II, or III of the Federal Controlled Substance Act 21 USC § 801 et seq. including preparations thereof being sold, transferred or otherwise furnished for physiological and psychoactive effects, which are chemically equivalent or identical with any of the substances referred to above.

C. *Driver* shall mean every person who drives or is in actual physical control of a vehicle.

D. *Emergency response vehicle* means any ambulance, fire department, law enforcement or civil defense vehicle or other vehicle used primarily for emergency purposes.

E. *Highway* 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.

F. *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.

G. *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.

H. *Motorcycle* shall mean a motor vehicle having not more than three wheels in contact with the ground.

I. *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.

J. *Operator* shall mean a person who is in actual physical control of a motor vehicle.

K. *Owner* shall mean the person who holds the legal title to a vehicle.

L. *Pedestrian* shall mean every person or any person afoot.

M. *Police Department* means the law enforcement agency authorized by the Northern Cheyenne Tribal Council to provide

primary law enforcement/patrol services to the Reservation,

N. *Police Officer or Law Enforcement Officer* shall mean every law enforcement officer authorized by the Northern Cheyenne Tribe to enforce this Chapter.

O. *Registration* shall mean a registration certificate and registration plates issued under the laws of a state or tribe pertaining to the registration of motor vehicles.

P. *Roadway* means any highway, road, alley, lane, or other public or private place adapted and fitted for public travel that is in common use by the public.

Q. *Right-of-way* shall mean the privilege of the immediate use of the roadway.

R. *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.

S. *Stop* means complete cessation from movement when required.

T. *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 the purpose of vehicular travel.

U. *Traffic* means pedestrians, ridden or herded animals, vehicles and other conveyances either singly or together while using any roadways for purposes of travel.

V. *Traffic-control signal* means any device, whether manually, electrically or

mechanically operated, by which traffic is alternately directed to stop and proceed.

W. *Tribe* shall mean the Northern Cheyenne Tribe.

#### **7.10.4 Traffic Violations Procedures**

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 Trial 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.

The Northern Cheyenne Rules of Civil Procedure, Title 4 of this Code, shall apply to such proceedings. The Tribal Court shall construe liberally the applicable Rules as needed to secure a just, speedy and inexpensive determination. No jury trial shall be available for such actions. The Court may adopt via rule additional procedures as needed for the just, speedy and inexpensive disposition of traffic offenses, including citation forms and bond amounts.

### **7.10.5 Safety Belt Required**

A. Each driver and passenger of a motor vehicle operated upon a highway or street shall wear a properly adjusted and fastened safety belt.

B. This Section does not apply if the motor vehicle being driven is a bus, school bus, taxicab, motorcycle, or other motor vehicle not required to be equipped with safety belts under federal law.

C. Failure to wear a safety belt is a civil offense of the driver of the involved motor vehicle.

D. Failure to wear a safety belt shall be a primary offense and shall, by itself, not be probable or just cause to stop and detain a vehicle.

### **7.10.6 Speeding Prohibited**

A. Every person operating or driving a vehicle of any character on a highway shall drive in a careful and prudent manner and at a rate of speed no greater than is reasonable and proper under the conditions existing at the point of operation, taking into account the actual and potential hazards then existing.

B. Where no special hazard exists that requires lower speed for compliance with subsection A, any speed not in excess of the posted speed limit for that area shall be lawful; but, it is illegal for any person to drive at any speed in excess of the posted speed limit for that area.

C. The posted speed limit shall not apply to vehicles when operated with due regard for safety under the direction of law enforcement in the chase or apprehension of violators of the law or of persons charged with or

suspected of any such violation, nor to fire departments when traveling in response to a fire alarm, nor to public or private ambulances when traveling in emergencies. This exemption shall not, however, protect the driver of any such vehicle from the consequences of a reckless disregard of the safety of others.

D. Any person who drives a number of miles per hour (“mph”) in excess of the maximum speed limit as posted as provided in this section, or at a speed greater than is reasonable and proper under conditions then existing is guilty of speeding and upon conviction thereof shall be sentenced to court costs and a fine associated with the mph over the posted speed limit as follows:

1. 1-10 MPH Over Posted Speed Limit: \$20

2. 11-20 MPH Over Posted Speed Limit: \$40

3. 20-30 MPH Over Posted Speed Limit: \$60

4. Any person who drives a number of miles per hour in excess of the maximum speed limit as posted in a construction zone shall be subject to a doubled fine.

E. 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 local authorities and law enforcement 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.

F. 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 a Judge to await a hearing on the speeding violation.

G. 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.

#### **7.10.7 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.

#### **7.10.8 Arrest Without a Warrant in Radar Cases**

A. The driver of any such motor vehicle may be arrested without a warrant under this Chapter provided the arresting officer is in uniform or displays his/her 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.

#### **7.10.9 Erection of Signs**

A. No operator of a motor vehicle may be arrested or cited for speeding under Section 7.10.6.D. unless signs have been placed at a conspicuous place upon a highway or street or townsite or community within the boundaries of the Northern Cheyenne Reservation.

B. The Police Department shall erect and maintain appropriate signs giving such notice of such use.

#### **7.10.10 Driving While Under the Influence of Alcohol or Controlled Substance**

A. A person who is under the influence of alcohol or a controlled substance while driving or in physical control of a motor vehicle to a degree which renders him/her incapable of safely driving, or has an alcohol concentration of 0.08 or more by weight, or any detectable level of a controlled substance in the person's body, is guilty of driving under the influence.

B. In any prosecution for a violation of this Section, the presence of alcohol or a controlled substance may be shown by chemical analysis of the defendant's bodily substances using an intoxilyzer or similar breath alcohol testing device, or a blood or

urine test. In addition to the results of chemical analysis, other competent evidence may be introduced on the question of whether the defendant was under the influence of alcohol or a controlled substance.

C. Chemical analysis of a person's blood, breath or urine for the purpose of determining any measured amount or detected presence of alcohol or controlled substance in the person's body shall be administered at the direction of the arresting officer having reasonable grounds to believe that the person was in violation of this Section

D. If the person under arrest refuses upon the request of a police officer to submit to chemical analysis under this Section, such person shall be presumed to be in violation of this Section. This presumption is rebuttable.

E. Driving under the influence is a Class A offense.

#### **7.10.11 Reckless Driving**

A. A person is guilty of a reckless driving offense if he/she drives any motorized vehicle in a knowing, willful or wanton disregard for his/her safety or the safety of others or property.

B. Reckless driving is a Class B offense.

#### **7.10.12 Aggravated Reckless Driving**

A. A person commits aggravated reckless driving if he/she drives a vehicle in willful or wanton disregard for the safety of persons or property and causes and/or inflicts injury upon the person of another.

B. Aggravated reckless driving is a Class A offense.

#### **7.10.13 Failure to Yield to an Emergency Vehicle**

A. Upon the immediate approach of an emergency response 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 emergency response vehicle has passed, except when otherwise directed by a law enforcement officer.

B. All persons in operational control of a motor vehicle upon a highway or roadway shall comply with any lawful order of a Police Officer to bring his motor vehicle to a stop, to drive to the edge or curb or the highway or roadway, or to otherwise alter or control the movement or position of his motor vehicle.

C. Failure to yield to an emergency vehicle is a Class B offense.

#### **7.10.14 Failure to Stop for School Bus**

A. Every driver of a motor vehicle, approaching from whatever direction, shall stop before reaching a school bus with its flashing red lights and stop sign extended and which is either loading or unloading school children.

B. Failure to stop for a school bus is punishable as follows:

1. A fine of not less than \$200.00 but not more than \$1,000.00 and up to 6 months' imprisonment, and

2. Impoundment of the motor vehicle used in committing the offense under this Section until all imposed fines and towing charges are paid.

#### **7.10.15 Unlawful Operation by Minor**

A. If a minor is found to have violated any provision of this Chapter, the Court may:

B. Impose a fine not to exceed \$50.00;

C. Issue an order prohibiting the minor from operating any motor vehicle for a fixed period of time; and

D. Order any motor vehicle owned or operated by such minor to be impounded by the Tribe for such time, not exceeding 60 days, as shall be fixed by the Court. However, if the Court finds that the operation of such motor vehicle was without the vehicle owner's consent, then such vehicle shall not be impounded.

E. 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 minor's driving privileges be suspended until payment of said fine; but no child shall be committed to or held in any detention facility or jail by reason of nonpayment of such fine.

#### **7.10.16 Injury to or Removal of Sign Marker**

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. Violation of this section is a Class C offense.

#### **7.10.17 Abandonment of Motor Vehicle**

A. Any motor vehicle which is

1. left for a period of 48 hours or more on a highway within the Northern Cheyenne Reservation, or

2. for a period of 5 consecutive days or more on

a. any town or community street on the Reservation;

b. private property, without the consent of the owner; or

c. any property owned or leased by the Northern Cheyenne Tribe,

shall be considered abandoned and subject to removal by local authorities.

B. The Northern Cheyenne Police Department or other law enforcement agency recognized by the Tribal Council may use its own equipment or personnel and facilities for the removal and preservation of the vehicle, or may hire other personnel, equipment and facilities for those purposes. The cost of removal and preservation 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.

1. 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.

2. All vehicles so removed must be held in a secured lot or garage not open to the general public so as to preserve the vehicle in approximately the same condition it was in when removed.

C. *Notice to Owner.* Upon removal of any abandoned vehicle, law enforcement officials shall inspect an abandoned vehicle for evidence of ownership, and shall make a reasonable effort to learn or determine its ownership and any liens of record.

1. If the name and address of the owner and/or lien holder of the vehicle are ascertained, the officer shall notify the owner and/or lien holder by certified or registered mail of the impoundment and location of the vehicle.

2. If the name and address of the owner and/or lien holder cannot be ascertained, notice shall be posted at the Little Wolf Tribal building, or a newspaper of general circulation in the county in which the vehicle was abandoned, which notice may contain multiple listings. The notice shall specify that the owner or lien holder may redeem the vehicle upon presenting satisfactory proof of ownership or right to possession, and payment of the civil penalty and expenses of removing and storing the vehicle as provided in subsection F not more than 30 days after the date

of notice; otherwise the vehicle will be sold in accordance with the provisions of this Chapter.

D. *Reclaiming the 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.

E. *Sale of Vehicle Not Reclaimed.* If the vehicle is not redeemed within 30 days after the date of notice as provided in subsection C, the vehicle may be sold or otherwise disposed of by the Police Department at public auction.

1. When any vehicle is sold, the Police Department's representative shall execute a certificate of sale in duplicate, deliver an original copy to the purchaser and retain the copy. The certificate of sale shall contain the name and address of the purchaser, the date of sale, the consideration paid, a description of the vehicle and a stipulation that no warranty is made as to the condition or title of the vehicle.

2. 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.



F. *Penalty.* Any person who unlawfully abandons a motor vehicle; or owns a motor vehicle that is abandoned unlawfully, is 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, and shall be charged with the expenses of moving and storing the vehicle.

G. *Transmitting Return of Sale and Balance of Proceeds.* When any vehicle is sold as provided in subsection E, the Police Department shall transmit to the Northern Cheyenne Tribal 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.

With the return of the sale, the Police Department shall transmit to the Northern Cheyenne Tribal Treasurer the balance of the proceeds of the sale after deducting the costs of the custody of the vehicle.

Upon receipt of the return of sale and such balance the Northern Cheyenne Tribal Treasurer shall keep a record of the receipt and deposit the balance in the Tribe's law enforcement fund.

#### **7.10.18 Accident Involving Damage to Vehicle**

A. The driver of any motor 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.

#### **7.10.19 Duty in the Event of an Accident**

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 subsection A shall be fined \$20.00.

C. 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 driver or attended by any person shall give his name, address and the registration number of the vehicle he/she is driving and upon request and if available exhibit his operator'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 arrangement for the carrying, or the making of arrangements for the carrying of such persons 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.

D. Any person failing to stop or comply with subsection C may be fined \$20.00.

E. 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.

F. Any person failing to stop or comply with the requirements of subsection E may be punished by imprisonment 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.

#### **7.10.20 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.

#### **7.10.21 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.

#### **7.10.22 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 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 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).



## **LAW AND ORDER CODE**

### **TITLE VIII - DOMESTIC RELATIONS CODE**

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## CHAPTER 1. MARRIAGE

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#### 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 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 irrevocable 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 laws with respect to the subject

matter 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, 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, Certification, and Consent**

A. The Trial Court (hereinafter “Court”) of 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/her name and the date, place and court in which the marriage was dissolved or declared invalid or the date and place of death of a 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.

B. The 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 Court Clerk, the Clerk shall issue a license to marry.

### **8.1.8 Effective Date of License**

A. 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 of age or older is eligible to apply for a license to marry. In addition, the Court may order the Court Clerk to issue a marriage license and a marriage certificate form to a party aged sixteen (16) years or seventeen (17) years who has no parent capable of consenting to his/her marriage or has the consent of both parents, or of the parent having the actual care, custody, and control of his/her 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 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/her best interest. Pregnancy alone does not establish that the best interest of the party will be served.

#### **8.1.10 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.

#### **8.1.11 Declaration of Marriage Without Solemnization**

A. A person desiring to consummate a marriage by written declaration must, prior to executing the declaration, meet all other provisions of this Title, and a certificate of 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 the 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.

#### **8.1.12 Declaration Acknowledged and Recorded**

The written declaration of marriage shall be filed by the Court Clerk 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.

#### **8.1.13 Validity of Common Law Marriage**

Common Law marriages are not invalidated by this Code.

#### **8.1.14 Prohibited Marriages**

A. The following marriages are prohibited:

1. A marriage entered into prior to the dissolution of an earlier marriage of one (1) or more 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, aunts and nephews, or between first cousins.

B. All such marriages listed in Section 8.1.14.A. are null and void from the beginning of the marriage.

C. 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.

D. Children born of a prohibited marriage are legitimate.

### **8.1.15 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 was under the age of sixteen (16), or was age sixteen (16) or seventeen (17) and did not have the consent of his/her parents or guardian or judicial approval; or

3. The marriage is prohibited under applicable law.

B. A declaration of invalidity may be sought by either party, the legal spouse in case of a bigamous marriage, the Tribal Prosecutor, or a child of either party, at any time prior to the death of one (1) 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.

## **CHAPTER 2. ANNULMENT, DIVORCE, AND CHILD CUSTODY**

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### **8.2.1 Annulment, Legal Separation and Divorce**

The Court shall have jurisdiction over annulment, legal separation, divorce and any paternity, child custody, division of property, child support or alimony decree pursuant to such annulment, legal separation or divorce, where at least one party to the marriage is an Indian, and at least one party has been a bona fide resident within the boundaries of the Northern Cheyenne Reservation for a period of 90 days immediately preceding the filing of the action.

Parties may petition for legal separation as predicate to divorce and the Court may enter appropriate relief regarding child custody and support and alimony/maintenance.

### **8.2.2 Annulment**

A. *Petition.* For any marriage performed under this Title, one (1) or both of the parties may, within one (1) year of the date of marriage, submit a petition of annulment to the Court, stating as grounds that:

1. One (1) or both parties was under sixteen (16) years of age at the time of the marriage;
2. One (1) or both parties did not freely consent to the marriage;
3. The parties were related to each other in a manner prohibited by Chapter 1 of this Title; or
4. One (1) or both parties had an existing spouse at the time of the marriage. The petition shall be sworn before a notary public or other official designated to verify signatures.

B. *Service of Process.* The defendant in an annulment proceeding shall be served with a copy of the complaint.

C. *Response.* If the non-petitioning spouse does not agree with the petition's allegations as to grounds for annulment or the division of property or custody of children proposed by the petition, the non-petitioning spouse may file with the Court a response within twenty (20) days of receiving the petition. The response shall be sworn before a notary public or other official designated to verify signatures, and shall contain an explanation of why there are no valid grounds for annulment or why the division of property

or custody of children proposed in the petition is not appropriate. A copy of the response shall be served on the petitioning spouse.

D. *Hearings and Decree.* Where such a response is received, the Court shall hold a hearing on the matter. If:

1. No response is received from the defendant after twenty (20) days, or
2. The Court determines that there are valid grounds for annulment, the Court shall enter a decree of annulment. The decree shall state the grounds for annulment and shall be signed by the presiding judge. A copy of the decree shall be delivered to each of the parties, and the original retained for the records of the Court. In extraordinary circumstances and for good cause shown, an annulment granted where the non-petitioning spouse did not respond may be set aside by order of the Court. Annulment voids a marriage from the time of the marriage forward.

### **8.2.3 Divorce**

A. *Grounds.* A divorce shall be granted where the Court finds that:

1. Irreconcilable differences have caused the irreparable breakdown of the marriage or;
2. The parties have mutually and voluntarily lived separate and apart without cohabitation for a period of at least six (6) months immediately preceding the filing of the petition.



B. *Petition.* Either of the parties may file a petition with the Court, sworn before a notary public or other official designated to verify signatures and subject to a filing fee as listed on the Court's current fee schedule. The petition shall state the grounds for divorce and the facts and circumstances substantiating those grounds.

C. *Summons.* When the clerk of the court issues a summons pursuant to this section, the clerk shall issue and include with the summons a temporary restraining order:

1. Restraining both parties from transferring, encumbering, concealing or in any way disposing of any property, real or personal, whether jointly or separately held, without either the consent of the other party or an order of the Court, except in the usual course of business or for the necessities of life. The restraining order must require each party to notify the other party of any proposed extraordinary expenditures at least five business days before incurring the expenditures and to account to the Court for all extraordinary expenditures made after service of the summons. However, the restraining order may not preclude either party from using any property to pay reasonable attorney fees in order to retain counsel in the proceeding

2. Restraining both parties from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and disability coverage held for the benefit of a party or a child of a party for whom support may be ordered. However, nothing in this subsection

adversely affects the rights, title, or interest of a purchaser, encumbrancer, or lessee for value if the purchaser, encumbrancer, or lessee does not have actual knowledge of the restraining order.

D. *Service of Process.* The respondent in a divorce proceeding shall be served with a copy of petition.

E. *Response.* The non-petitioning spouse may file a response to the petition within twenty (20) days of receipt of the petition. Such response may state the background facts and circumstances which show that there are no valid grounds for divorce, or may seek a division of property or custody of children different from any proposed by the petition.

F. *Hearing*

1. In all divorce cases, the Court shall order and hold a hearing, unless the parties have stipulated to all matters and issues pending in which case the Court shall have the discretion to enter a decree without a hearing if the Court is convinced the stipulation is fair and equitable. If the matter is decided without a hearing, the Court shall have one party testify on the record as to the terms of the divorce. The hearing shall be held within six (6) months after the date the petition is filed. Where the custody of children is at issue in the case, the Court may order a home study by an appropriate social worker or other professional, to be completed and submitted to the Court prior to the hearing. The purpose of the home study shall be to assist the Court in determining the custody issue.

2. At the hearing, both spouses shall have an opportunity to testify, cross-examine the other spouse and any witnesses, call and question other witnesses, and present documentary evidence. Each spouse may retain counsel or otherwise be represented in the proceeding. The hearing shall be closed to the public unless both spouses agree otherwise.

G. Divorces shall be granted without regard to the fault of the parties.

#### **8.2.4 Jurisdiction; Commencement of Proceedings**

A. The Trial 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 proceedings; or

b. Has been the child's home within six (6) months before commencement of proceeding and the child is absent from this home because of his removal or retention by the person claiming custody or for other reasons, and a parent or person acting as parent continues to live within the Northern Cheyenne Reservation; or

2. It is in the best interest of the child that the Tribal Court assume 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 available within the Northern Cheyenne Reservation substantial evidence concerning the child's present or future care, protection, training, and personal relationship; or

3. The child is physically present with the Northern Cheyenne 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

c. No other state or tribe has jurisdiction under prerequisites substantially in accordance with subsections A.1., A.2., A.3.a. or A.3.b. of this section or another state or tribe has declined to exercise jurisdiction on the ground that the Northern Cheyenne Reservation is the more appropriate forum to determine custody of the child, and it is in the best interest of the child that the Court assume jurisdiction.

B. A child custody proceeding is commenced in the Court:

1. By a parent, by filing a petition:

a. For dissolution or legal separation; or

b. For custody of the child in the Court; or

2. By a person other than a parent, by filing a petition for custody of the child in Court, but only if he is not in the physical custody of one of his parents.

C. 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 contestants, who may appear, be heard, and file a responsive pleading. The Court, upon the showing of good cause, may permit intervention of other interested parties.

### **8.2.5 Child Custody Actions Outside Divorce, Legal Separation and Annulment Proceedings**

The Court shall have authority to determine custody of children as between parents, grandparents, and legal guardians, or as between parents, grandparents, or legal guardians and anyone with actual physical custody of the child, either pursuant to a court order or otherwise, where there is no divorce, legal separation, or annulment proceeding pending. Such a custody proceeding shall commence with the filing of a written petition by the parent, grandparent, legal guardian or the person with actual physical custody. The Court shall have jurisdiction over this action if a least one (1) party to the action is an Indian and at least one (1) party has been a

bona fide resident within the boundaries of the Northern Cheyenne Reservation for a period of 90 days immediately preceding the filing of the action. In ruling on a custody petition, the Court shall employ the standards set forth in Section 8.2.4 of this Title and may order periodic support payments as set forth in that section. After the Court rules on the petition, neither party may file another custody petition for six (6) months absent a substantial change in circumstances. Any such change shall be described in the petition. Where abuse, neglect, or abandonment of the child is suspected, a petition may be filed at any time.

### **8.2.6 Enforcement of Child Support Orders**

If the parent willfully refuses to make periodic support payments as ordered by the Court, the Court may initiate criminal contempt proceedings under Title V or Title VII of this Code and in the event of conviction shall have available the full range of sanctions available under those Titles. No such proceedings shall be instituted if the parent fails to pay by reason of indigence.

### **8.2.7 Best Interest and Welfare of Child**

A. For the purpose of parental rights and responsibilities, the best interests and welfare of the child is determined by the Court's consideration and evaluation of all factors affecting the best interests and welfare of the child. These factors include all of the following when applicable:

1. The love, affection, and other emotional ties existing between the parents and child and the ability of each parent to provide the child with nurture, love, affection and guidance.

2. The ability of each parent to assure that the child receives adequate food, clothing, shelter, medical care, and a safe environment.

3. The child's developmental needs and the ability of each parent to meet those.

4. The sufficiency and stability of each parent's home environment, the impact of extended family, the length of time the child has lived in each parent's home, and the desirability of maintaining continuity in the child's home and community.

5. The willingness and ability of each parent to facilitate and encourage learning and participating in the culture and traditions of the Northern Cheyenne Tribe.

6. The willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child.

7. The moral fitness of the parents, as that fitness impacts the child.

8. The mental and physical health of the parents, as that health impacts the child.

9. The home, school, and community records of the child and the potential effect of any change.

10. If the Court finds by clear and convincing evidence that a child is of sufficient maturity to make a sound judgment, the Court may give substantial weight to the preference of

the mature child. The Court shall also give due consideration to other factors that may have affected the child's preference, including whether the child's preference was based on undesirable or improper influences.

11. Evidence of domestic violence/partner or family member abuse. In determining parental rights and responsibilities, the Court shall consider evidence of domestic violence/partner or family member abuse. If the Court finds credible evidence that domestic violence has occurred, and there exists one incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, this combination creates a rebuttable presumption that a parent who has perpetrated domestic violence may not be awarded custody of the child. This presumption may be overcome only by clear and convincing evidence that the best interests of the child require that parent have custody. The Court shall cite specific findings of fact to show that the custody best protects the child and the parent or other family or household member who is the victim of domestic violence. If necessary to protect the welfare of the child, residential responsibility for a child may be awarded to a suitable third person, provided that the person would not allow access to a violent parent except as ordered by the Court. If the Court awards residential responsibility to a third person, the Court shall give priority to the child's nearest suitable adult relative. The

fact that the abused parent suffers from the effects of the abuse may not be grounds for denying the parent residential responsibility.

12. The interaction and interrelationship, or the potential for interaction and interrelationship, of the child with any person who resides in, is present, or frequents the household of a parent and who may significantly affect the child's best interests. The Court shall consider that person's history of inflicting, or tendency to inflict, physical harm, bodily injury, assault, or the fear of physical harm, bodily injury, or assault, on other persons.

13. The making of false allegations not made in good faith, by one parent against the other.

14. Any other factors considered by the Court to be relevant to a particular parental rights and responsibilities dispute.

B. In a proceeding for parental rights and responsibilities of a child of a service member, the Court may not consider a parent's past deployment or possible future deployment in itself in determining the best interests of the child but may consider any significant impact on the best interests of the child of the parent's past or possible future deployment.

C. In any proceeding under this Chapter, the Court shall consider that a parent has a fundamental right to parent their child and any analysis in a fact finding under this Chapter shall reflect the Court's application of this standard to a final custody determination, listing any factors considered under subsection A.1. to A.14.

D. The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.

#### **8.2.8 Alimony**

When an annulment, legal separation, or divorce is granted, the Court may order either party to make periodic alimony payments as necessary for the support of the other party. Such orders may be modified at any time, on motion of either party, to reflect changes in either party's economic circumstances. Upon motion, the Court shall terminate alimony to any spouse who has remarried.

#### **8.2.9 Temporary Alimony and Custody Awards**

The Court may issue temporary orders during the pendency of an annulment, legal separation, or divorce proceeding as to child custody, alimony, and the possession of real and personal property, not held in trust for any individual. Such orders may be granted upon motion of either party, or on the Court's own motion. A person may file a petition for temporary emergency custody without notice to the adverse party if it clearly appears from specific facts shown by affidavit that immediate and irreparable injury will result to the applicant and/or his/her children before notice can be served and a hearing held thereon. A hearing, for which 10 days advance notice shall be provided to the parties, shall be held prior to the issuance of such temporary orders, unless the Court determines that an emergency exists, or a party cannot be found, in which case such order may be issued ex parte. Emergency shall be interpreted to include, but not limited to; a danger of physical abuse to the spouse or the parties' children, a severe emotional abuse, a lack of means for interim subsistence, or the danger the child will be

removed from this jurisdiction. An order may be issued within 24 hours of the filing of the affidavit. If the initial order is issued ex parte, a full hearing on the temporary order shall be held within 10 business days. At the hearing upon 10 days, an interim order shall be issued pending a final hearing.

#### **8.2.10 Indian Child Welfare Act Transfers**

A. Upon written notification to the Trial Court from a State court or social service agency of a possible Indian Child Welfare Act transfer, the Court shall promptly notify the Director of Northern Cheyenne Human Services (hereafter referred to as the “Director” for purposes of this Section).

B. Upon notification, the Director shall determine through the enrollment department of the Tribe whether the youth is enrolled or eligible for enrollment and shall forward a written verification to the Trial Court in a timely manner.

C. If the youth is enrolled or eligible for enrollment with the Tribe, and if the Director determines, upon preliminary investigation, that transfer appears to be in the best interest of the youth, the Tribe shall intervene in the State court proceeding.

D. If transfer is in the best interest of the youth, the Director shall initiate all necessary documentation and recommendations in the following areas to assist the appropriate social service agency in case planning and finding proper relative placement for the youth:

1. The family relationships of the youth on and off the Reservation for potential placement;
2. The social histories of the extended family members;

3. The health and special needs of the youth; and

4. Developing a service program for the youth

E. The necessary documentation and recommendations shall be forwarded to the appropriate social service agency by the Director, whereby the social service agency shall assume the case management and, subject to the orders of the Court, shall be responsible for the placement of the youth in the event of transfer.

F. The Director shall notify the Tribal receiving home, when available, of the potential transfer of the youth to the Reservation and the need for placement in said home.

G. When the Court receives an order of a State court for an Indian Child Welfare Act transfer, the appropriate Prosecutor or other designated representative shall file a Motion to Accept the Transfer of Jurisdiction and shall request a hearing on the Motion in a timely manner.

H. The Court shall determine whether the transfer to the Tribes’ jurisdiction would be detrimental to the best interest of the youth in a transfer hearing initiated by the guardian ad-litem. In making such a determination, the Court may consider:

1. Whether the youth or the youth's family or extended family will be in need of any specialized services which the Tribe and their resources are unable adequately to provide; and
2. The emotional, cultural and social ties of the youth and the youth's family; and

3. Any other matters which may adversely affect the Tribe's ability to provide the necessary services for the youth and the youth's family or extended family.

I. When transfer is either accepted or declined by the Court, the Court shall forward a certified copy of the Trial Court Order to the appropriate State court.

J. Upon entering an order accepting an Indian Child Welfare Act transfer as provided in this Chapter, the Court shall proceed with the case as if the petition had been originally filed or the adjudication had been originally made in this Court, once the State court documents are properly filed with this Court.

K. The youth shall be transported back to the Reservation by the Director or Human Services and the initial temporary placement shall be the responsibility of the appropriate social service agency.

#### **8.2.11 Tribal Appearance Regarding ICWA Proceedings**

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 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 appearances containing the information set out in subsection B with modification of the time limit in subsection 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.

#### **8.2.12 Proceeding After ICWA Transfer**

Where jurisdiction is properly transferred to the Tribal 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.

### **8.2.13 Records**

The Director of the Northern Cheyenne Human Services will intake and preserve records of all referrals received and document compliance with all applicable provisions of the Northern Cheyenne Court. These records shall be confidential and shall not be open to inspection except upon an order of the Northern Cheyenne Court.

### **8.2.14 Division of Property**

When an annulment, legal separation, or divorce is granted, the Court shall make such equitable distribution of all real and personal property as it deems just and proper. With respect to trust property, the Court shall have authority to make appropriate orders to distribute such property, but shall have no authority to order that any property or interest in property be removed from trust status, or to make any order that would result in such removal.

### **8.2.15 Recognition of Foreign Divorces and Annulments**

A divorce or annulment duly granted under the laws of the United States, any Tribe, state, or foreign nation shall be recognized as valid by the Trial Court for all purposes.

## **CHAPTER 3. ADOPTIONS**

### **SECTIONS**

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### **8.3.1 Who May Be Adopted**

A. Any person who is within the jurisdiction of the Northern Cheyenne Court may be adopted under this Code. The Court may also hear petitions transferred from state courts pursuant to 25 U.S.C. 1911(b).

C. In a case where all persons petitioning to adopt a child are not Indians, the petition shall not be granted unless:

1. No Indian is available who is willing to adopt the child;
2. The petitioners agree in writing that the Northern Cheyenne Trial Court shall retain exclusive jurisdiction over custody of the child, wherever domiciled or resident.

### **8.3.2 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(s) and shall contain;

A. The full name, residence, sex of child and documentary proof of the date and place of birth of the child to be adopted;

B. The full name, residence, sex and occupation of the adoptive parent(s) 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 the 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(s);

E. An agreement by the adopting parents that it is their desire that a relationship of parent(s) 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.

### **8.3.3 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 Twelve (12) Years of Age 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/her 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 petitions 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 final decree of adoption the parent(s) or child may withdraw consent thereto only up on 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.

### **8.3.4 Investigation and Report**

Within five (5) days after 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 general background of the adoptive home and of the adoptive parent(s) and to make recommendations on the proposed adoption.

In the case of an adoption by persons not residing within the 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 parent(s), for the above information.

### **8.3.5 Hearing on Adoption**

A. Within five (5) days after the written report required by section 8.3.4 is filed, the Court shall fix a time for a hearing on the petition for the adoption. The adoptive parent(s) 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 enter an interim decree and 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 parent(s);
4. That the best interests 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.

### **8.3.6 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 section 8.3.4, as to the welfare of the child, the current situation and conditions of the adoptive home and the adoptive parent(s). 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 interest 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.

### **8.3.7 Adoption Records**

All records and reports, proceedings and orders in adoption cases are confidential 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.

### **8.3.8 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 adoptions, 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 the 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 the

new record of birth in the new name and with the name of the adopting parent(s) is recorded.

### **8.3.9 Name and Legal Status of Adopted Child**

Minor children adopted by order of the 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.

### **8.3.10 Child's Rights**

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

### **8.3.11 Confidentiality**

All hearings held pursuant to this Chapter that involve children shall be;

A. Conducted in closed and private chambers;

B. The names of all youth involved shall not be published; and

C. A record of all proceedings shall be made and preserved with the Court. All Court records concerning youth under this Chapter, including social, medical and psychological reports, shall be kept confidential and shall be open for inspection only upon Court order and then only to the following persons or agencies:

1. The youth;

2. The youth's representative;

3. The youth's parent(s), legal guardian or custodian and their representatives;
4. The juvenile officer; and
5. Any other person having a legitimate interest in the case in the performance of their official duties, as determined by the Court.

## **CHAPTER 4. GUARDIANSHIP OF CHILDREN**

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### **8.4.1 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.

- D. By accepting a Court appointment as guardian, a guardian submits personally to the jurisdiction of the Court in any proceeding relating to the guardianship that may be instituted by any interested person.

### **8.4.2 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.

### **8.4.3 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, Northern Cheyenne Human Services personnel, 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/her immediate family with whom he/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.

#### **8.4.4 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 names 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 my 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.

#### **8.4.5 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 permits.

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.

#### **8.4.6 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. A person becomes a guardian of a child by acceptance of a testamentary appointment or upon appointment by the Court. Any letters of guardianship must indicate that the guardian was appointed by Court order.

C. The Court shall 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.

D. The person appointed guardian shall take an oath to discharge faithfully the duties of his/her office.

E. After the person appointed guardian has qualified by furnishing any security required of him/her by the Court, by taking the oath, and by fulfilling any other special conditions imposed by the Court, the Court shall issue letters of guardianship to the guardian. 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.

F. 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 of age.

G. The order of appointment of a guardian is to be reviewed at the Court's discretion, but at least every year.

#### **8.4.7 Temporary Guardianship for Immediate Needs**

If necessary in the discretion of the Chief Judge, and upon the filing of a petition pursuant to Section 3.6.2 which describes the immediate need for a guardian to be appointed for emergency purposes, the Court may waive the hearing requirements provided in this Chapter and appoint a temporary guardian with the status of an ordinary guardian of a minor, but the authority of a temporary guardian shall not last longer than three (3) months.

#### **8.4.8 Modification or Termination of Order of Appointment of Guardian**

A. A modification hearing shall be held in a 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. The guardianship status continues until terminated, without regard to the location from time to time of the guardian and child. 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/her fiduciary capacity on behalf of the child; or

5. Upon the child's eighteenth (18th) birthday.

#### **8.4.9 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/her custody.

#### **8.4.10 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 interests in real property, or 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 as all times as a prudent administrator, and shall be personally responsible for all damages resulting from his failure to so act.

#### **8.4.11 Extraordinary Action**

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.

#### **8.4.12 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 a special bank or investment accounts in the name of the child, whether or not he/she is an enrolled member of the Northern Cheyenne Tribe.

#### **8.4.13 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 Rules of Civil Procedure (Title IV).

E. The Court shall render judgement accepting the final accounting, when it is convinced of the correctness of the accounting.

F. A judgement of the Court accepting the final accounting does not relieve the guardian of responsibility or liability for breach of fiduciary duty to the child.

## CHAPTER 5. PATERNITY

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### 8.5.1 Jurisdiction

A. The Northern Cheyenne Trial Court shall have jurisdiction over any action to determine paternity under this Title.

B. Any person who has sexual intercourse with a person who is a member or is eligible to become a member of the Tribe thereby submits to the jurisdiction of the Trial Court as to an action brought under this Title with respect to a child who may have been conceived by the act of intercourse.

C. In addition to any other method provided by statute, personal jurisdiction may be acquired by personal service outside the Reservation or by service in accordance with tribal law as now or hereafter amended.

### 8.5.2 Applicability

All civil proceedings pertaining to the establishment, enforcement or modification of child support obligations shall comply with this Title.

### 8.5.3 General Provisions

A. *Statute of Limitations.* No statute of limitations applies to an action to establish paternity.

B. *Determination of Maternity.* The provisions of this chapter may be applied to determinations of maternity.



#### **8.5.4 Rules of Procedure in Paternity Proceedings**

A. Any paternity action under this chapter is a civil action governed by Title IV, Rules of Civil Procedure.

B. All proceedings in this section shall assure that concerned parties, including minors, shall have proper notice of hearings, and be accorded the right to professional counsel or lay advocate at their own expense, the opportunity to introduce evidence, to be heard on their own behalf, and to examine witnesses. If the alleged father does not appear after notice through service of process, the hearing may be held and decree rendered in his absence.

C. Any hearings or trial under this section shall be in closed Court without admittance of any person other than those necessary to the action. All papers, records of files, other than the part of the permanent record of the Court or of a file of any agency, are subject to inspection only upon consent of the Court and all interested parties, or in exceptional cases only upon an Order of the Court for good cause shown.

#### **8.5.5 Definitions**

A. *Alleged or Putative Father* means any man who might be the biological father of a child.

B. *Adult Child* means a child 18 years old or older.

C. *Child* means a person who is less than 18 years old who has not been emancipated by order of a court of competent jurisdiction or by legal marriage.

D. *Genetic test* means approved genetic testing by an accredited laboratory used to establish that the alleged father is the child's biological father with a probability of paternity of 99% or higher.

E. *Party* means the parent, guardian, child, social service agency, or the Tribe to whom certain rights accrue, including, but not limited to, with certain restrictions and limitations; the right to be notified of proceedings; to retain counsel or, in some cases, to secure Court approved spokespersons; to appear and present evidence; to call, examine, and cross-examine witnesses; the unlimited or restricted right to discovery and the inspection of records; and the right to request a hearing or appeal a final order.

F. *Paternity* means biological fatherhood. Establishing paternity means identifying the father of a child and legally determining that he is the father.

G. *Presumption* means a fact presumed to be true under law.

#### **8.5.6 Presumption of Paternity**

A man is presumed to be the natural father of a child if:

A. He and the child's mother are or have been married to each other and the child is born during the marriage, or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, divorce, or dissolution, or after a decree of separation is entered by a court; or

B. Before the child's birth, he and the child's mother have attempted to marry each other by a marriage solemnized in apparent compliance with the law, although the attempted marriage is or could be declared

invalid, and the child is born within 300 days after the termination of cohabitation; or

C. After the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and

1. He has acknowledged his paternity of the child in writing filed with the Court; or
2. With his consent, he is named as the child's father on the child's birth certificate; or
3. He is obligated to support the child under a written voluntary promise or by court order;

D. He acknowledges his paternity of the child in a writing filed with the Court, who shall promptly inform the mother of the filing of the acknowledgment, and she does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the Court. If another man is presumed under subsection A, B, C, or D of this section to be the child's father, such acknowledgment shall give rise to the presumption of paternity only with the written consent of the otherwise presumed father or after such other presumption has been rebutted.

E. A presumption under this section may be rebutted in an appropriate action by a preponderance of evidence. If two or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a court decree establishing

paternity of the child by another man or an order of the Court disestablishing paternity.

#### **8.5.7 Good Cause Not to Establish Paternity**

A woman may be excused from submitting to genetic testing or from identifying or locating the father of her child when there is good cause not to reveal his identity or location. The Court may hold a closed, ex parte hearing to determine whether good cause exists. "Good cause" may include, but is not limited to:

- A. Cases involving domestic violence;
- B. Cases involving incest or rape; or
- C. Cases where identification of the father is not in the best interest of the child.

#### **8.5.8 Artificial Insemination**

A. *Husband and Child Relationship.* If, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated in law as if he were the natural father of the child thereby conceived. The husband's consent must be in writing and signed by him and his wife. The physician will certify their signatures and the date of the insemination.

B. *Donor and Child Relationship.* The donor of semen provided to a licensed physician for use in artificial insemination of a woman other than the donor's wife is treated in law as if he were not the natural father of a child thereby conceived, unless the donor and the woman agree in writing that said donor shall be the father. The agreement must be in writing and signed by the donor

and the woman. The physician shall certify their signatures and the date of insemination.

C. *Administrative Record.* The failure of the licensed physician to perform any administrative act required by this section shall not affect the father and child relationship. All papers and records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, are subject to inspection only in exceptional cases upon an order of the Court for good cause shown.

#### **8.5.9 Agreed Paternity Order**

A. The parties may submit an agreed order establishing the paternity of a child. Before deciding whether to approve the agreed order, the judge shall discuss the agreed order with each party and shall:

1. Explain the proposed agreed order in detail and the consequences of the order and of the person's failure to comply with agreed terms;
2. Assure that the person's consent to the proposed agreed order is not the result of coercion, threat, duress, fraud, over-reaching, or improper promise on the part of any person;
3. Explain the person's right to a spokesperson at their own expense;
4. Explain the burden of proof as to each issue;
5. Explain that once the person agrees to the proposed order and it is signed and entered by the Court, it will be too late for the person to change his or her mind.

D. If the Court finds that any consent was not truly voluntary, the agreed order shall not be entered and the case shall proceed to a hearing.

#### **8.5.10 Paternity Petition**

A. *Generally.* A paternity proceeding under this Title may stand alone as a separate proceeding or it may be joined with an action to determine child support at the request of the alleged father or the child's mother. Paternity proceedings may also be joined with an action for divorce, dissolution, annulment, declaration of invalidity, separate maintenance, child-parent relationship, support, or any other civil action in which paternity is an issue including proceedings in Juvenile Court.

B. *Who May File Petition.* A petition to request the Court to establish paternity may be filed by:

1. An adult child, or, a child's legal guardian;
2. The child's natural mother;
3. An alleged father of the child;
4. Any tribal agency with an interest in determining parentage; or
5. Any social service agency.

C. *Contents of Petition.* A petition to establish paternity, prepared on a form approved by the Court shall state:

1. The names, ages, addresses, and tribal affiliations, if any, of the natural mother, the alleged father(s), the child, all others who have legal rights of custody, visitation, or

support of the child and of the petitioner;

2. Whether the natural mother and the alleged father are or were married, and the dates of marriage, separation, and divorce, if any;

3. Whether the natural mother and alleged father agree that the alleged father is the natural father of the child; and

4. Whether there are other courts or administrative paternity proceedings or state paternity affidavits concerning the child or whether parental rights have been terminated.

5. A certified copy of the child's birth certificate shall be attached to the petition or provided to the Court at least ten (10) days before the first hearing.

6. An affidavit setting forth the factual basis for the alleged paternity of each child.

D. *Service and Summons.* All parties, including the child if over 18 years of age, the biological mother, and the man alleged in the petition to be the natural father, shall be served with the petition and a summons. The summons shall notify the party that the party must respond to the summons and petition by filing an answer with the Court and serving it on all parties. The summons shall further notify the party that, if written response is not filed with the Court within 21 days after receipt of the summons and petition, the Court may, without the party's response, enter a judgment of paternity by default only if it has admitted evidence of genetic testing

statistically proving that the man alleged in the petition is the biological father.

#### **8.5.11 Paternity Hearing**

The following rules shall apply to paternity hearings:

A. Only those persons the Court finds to have a legitimate interest in the proceedings may attend hearings under this chapter;

B. The mother of the child and the alleged father may be compelled to testify or to provide DNA samples at the paternity hearing;

C. Testimony of a health care provider concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged for purposes of admitting this evidence;

D. The parties shall provide testimony on how the costs of paternity testing shall be paid and the Court will make a determination based on this testimony.

E. The Court may enter a judgment of paternity by default only if it has admitted evidence of genetic testing statistically proving that the man alleged in the petition to be the natural father is the biological father.

#### **8.5.12 Evidence Relating to Paternity**

Genetic tests are the preferred method of establishing paternity. Evidence relating to paternity may include:

A. Genetic test result, weighted in accordance with evidence of the statistical probability of the alleged father's paternity;

B. Evidence of an ongoing intimate relationship at the time of conception that would support paternity;

C. An expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration for the mother's pregnancy;

D. Medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts. If a man has been identified as a possible father of the child, the Court may, and upon request of a party shall, require the child, the mother, and the man to submit to appropriate tests; and

E. Any other evidence relevant to the issue of paternity of the child.

#### **8.5.13 Genetic Testing**

In all paternity proceedings, the Court shall require the child, mother, and alleged father(s) to submit to genetic tests, unless good cause exists not to require such testing. The following requirements apply to genetic testing under this section:

A. *Lab Accredited.* The tests shall be performed by an accredited paternity genetic testing lab that performs legally and medically acceptable tests, approved by the Court as an accredited genetic testing laboratory of reputable standing.

B. *Admission into Evidence.* Unless a party objects to the results of genetic tests in writing at least five (5) days before the hearing, the tests shall be admitted as evidence of paternity without the need for foundation testimony or other proof of authenticity.

C. *Affidavit of Genetic Expert.* The results of genetic tests must be accompanied by an affidavit from the expert describing the expert's qualifications and analyzing and interpreting the results as well as documentation of the chain of custody of the genetic samples.

D. *Contempt of Court.* Failure to submit to genetic tests when required by the Court may constitute civil contempt of the Court.

#### **8.5.14 Paternity Order**

The judgment or order of the Court determining whether or not a respondent is a parent of a child shall be based on a preponderance of the evidence. If the judgment or order of the Court establishes a different father than that on the child's birth certificate, the Court shall send the order to the Department of Vital Statistics of the state in which the child was born.

#### **8.5.15 Disestablishment of Presumed Paternity**

A man presumed to be a child's father under Section 8.5.6 of this chapter may bring an action for the purpose of declaring the nonexistence of the father and child relationship only if the action is brought within a reasonable time after obtaining knowledge of relevant facts. After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party. Any other interested party may bring an action at any time for the purpose of declaring the existence or nonexistence of the father and child relationship. Regardless of its terms, no agreement between an alleged or presumed father and the mother or child shall bar an action under this section. If an action under this section is brought before the birth of the child, all proceedings may be stayed

until after the birth, except service of process and discovery, including the taking of depositions.

#### **8.5.16 Paternity Records**

The records filed in a paternity action shall be confidential. Only parties to the case and any tribal or social service agency with an interest in determining parentage may obtain copies.

#### **8.5.17 Paternity Established By Other Jurisdictions**

Properly issued court and administrative orders, judgments, or decrees of other tribes, states, or federal agencies establishing paternity will be given full faith and credit. Such orders will be considered properly issued when the issuing court or administrative agency had personal jurisdiction over the person claimed to be bound by the foreign order, subject matter jurisdiction over the matter, proper service of process under the law of the issuing jurisdiction was made on such person, and the order was issued according to the laws of that jurisdiction and does not violate the public policy of the Tribe. The Court shall not recognize any paternity judgments entered by default in the absence of evidence of genetic testing statistically proving that the man alleged is actually the biological father.



**LAW AND ORDER CODE**  
**TITLE X – JUDICIAL CONDUCT**

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## **JUDICIAL RULE 1: A JUDGE SHALL UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY.**

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

A judge should, at all times, consider how his or her behavior and demeanor, inside and outside of the courtroom affects the public image of the Tribe and its courts. Leaders are judged by their speech, actions, dress, appearance, manners, and conduct, and it is important to always project the image of judicial impartiality and independence. To preserve the independence of the judiciary, no judge shall answer or otherwise respond to any inquiry from the Tribal Council or others regarding any case other than to supply copies of publicly available court filings, records and any filed written opinions.

### **A. *Honesty and Independence of the Northern Cheyenne Judiciary***

1. A Northern Cheyenne judge shall uphold the integrity and independence of the Northern Cheyenne judiciary. An independent and honorable Northern Cheyenne judiciary is essential to justice in the tribal community. A Northern Cheyenne judge shall help create and maintain such a judiciary, and shall observe high standards of conduct toward achieving this goal.

2. A judge shall encourage a separation between the judicial branch and other branches of tribal government, and shall avoid any contact or duty that violates such a separation.

3. A judge shall not participate in legislative or executive decision-making except where such participation is in accordance with the traditions and laws of the Tribe.

4. A judge should participate in establishing, maintaining, and enforcing, and should himself or herself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved.

5. A judge should always be aware that the judicial system is for the benefit of the litigant(s) and the public, not the judiciary.

### **B. *Maintaining the Integrity of the Judicial System***

1. A judge shall observe high standards of conduct so that the integrity, impartiality and independence of the judiciary are preserved and shall act at all times in a manner that promotes public confidence in the judiciary and the judicial system.

2. A judge shall not commit a criminal act.

3. A judge shall not engage in conduct that reflects adversely on the judge's character, competence, temperament or fitness to serve as a judge.



4. A judge shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

5. A judge shall not allow family, social or other relationships to influence judicial conduct or judgment.

6. A judge shall not use the position to advance the private interests of the judge or any person, nor shall a judge convey or permit anyone to convey the impression that anyone has a special influence with the judge, but a judge may provide a character or ability reference for a person about whom the judge has personal knowledge.

7. A judge shall not testify as a character witness except pursuant to subpoena.

**JUDICIAL RULE 2: A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE'S ACTIVITIES.**

A. A judge shall respect and comply with the law, and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge shall not allow his or her family, social, political or other relationships to influence the judge's judicial conduct or judgment.

C. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge.

D. A judge shall not hold membership in any organization that practices invidious

discrimination on the basis of race, sex, religion or national origin.

**JUDICIAL RULE 3: A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY.**

*A. Judicial Duties in General*

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

1. A Judge of the Northern Cheyenne Trial Court should avoid impropriety and the appearance of impropriety in all his/her activities.

2. A Judge of the Northern Cheyenne Trial Court should respect and comply with the law and tradition of the Northern Cheyenne Tribe and should at all times act in a manner that promotes public confidence in the honesty and impartiality of the Northern Cheyenne Judiciary. A Judge should also respect and comply with all tribal, state and federal laws.

3. A judge shall exercise the inherent powers and duties of judicial office impartially and diligently in order to achieve a prompt and speedy resolution of disputes, and obtain a just resolution of all matters under consideration.

*B. Adjudicative Responsibilities*

1. A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

2. A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism.

3. A judge shall require order and decorum in proceedings before the judge.

4. A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers and advocates, and of staff, court officials and others subject to the judge's direction and control.

5. A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.

6. A judge shall require lawyers and advocates in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others. This Section does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.

7. A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer or advocate, the right to be heard according to law.

8. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

a. Where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

b. A judge may initiate or consider any ex parte communications when expressly authorized by law to do so.

9. A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

10. A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.

11. A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

12. A judge shall dispose of all judicial matters promptly, efficiently and fairly.

13. A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing. The judge shall require similar abstention on the part of court personnel subject to the judge's direction and control. This Section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This Section does not apply to proceedings in which the judge is a litigant in a personal capacity.

14. A judge shall not, with respect to cases, controversies or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.

15. A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

16. A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity.

C. *Administrative Responsibilities.*

1. A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

2. A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

3. A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge

shall not approve compensation of appointees beyond the fair value of services rendered.

D. *Disciplinary Responsibilities*

1. A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action. A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for office shall inform the appropriate authority.

2. A judge who receives information indicating a substantial likelihood that a lawyer or advocate has committed a violation of the Rules of Professional Conduct should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority.

E. *Disqualification*

1. A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

a. the judge has a personal bias or prejudice concerning a party or a party's lawyer or advocate, or has personal first-hand knowledge of disputed evidentiary facts concerning the proceeding;

b. the judge served as a lawyer or advocate in the matter in controversy, or a lawyer or advocate with whom the judge previously practiced law served during such association as a lawyer or advocate concerning the matter, or the judge has been a material witness concerning it;

c. the judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other more than de minimis (minimal) interest that could be substantially affected by the proceeding

d. the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director or trustee of a party;

(ii) is acting as a lawyer or advocate in the proceeding;

(iii) is known by the judge to have a more than de minimis interest that could be

substantially affected by the proceeding; or

(iv) is to the judge's knowledge, likely to be a material witness in the proceeding;

e. the judge knows or learns by means of a timely motion that a party or a party's lawyer or advocate has within the previous 5 years made aggregate contributions to the judge's campaign in an amount that is greater than \$50.00.

f. the judge, while a judge or a candidate for judicial office, has made a public statement that commits, or appears to commit, the judge with respect to

(i) an issue in the proceeding; or

(ii) the controversy in the proceeding.

2. A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse and minor children residing in the judge's household.

**JUDICIAL RULE 4: A JUDGE SHALL SO CONDUCT THE JUDGE'S EXTRA-JUDICIAL ACTIVITIES AS TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL OBLIGATIONS.**

*A. Extra-judicial Activities in General*

A judge shall conduct all of the judge's extra-judicial activities so that they do not:

1. cast reasonable doubt on the judge's capacity to act impartially as a judge;
2. demean the judicial office; or
3. interfere with the proper performance of judicial duties.

*B. Avocational Activities*

A judge may speak, write, lecture, teach and participate in other extra-judicial activities concerning the law, the legal system, the administration of justice and nonlegal subjects, subject to the requirements of this Code.

*C. Governmental, Civic or Charitable Activities*

1. A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law, the legal system or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interests.

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

3. A judge may serve as an officer, director, trustee or non-legal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice or of an educational, religious, charitable, or civic organization not conducted for profit, subject to the following limitations and the other requirements of this Code.

a. A judge shall not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization

(i) will be engaged in proceedings that would ordinarily come before the judge, or

(ii) will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

b. A judge as an officer, director, trustee or non-legal advisor, or as a member or otherwise:

(i) may assist such an organization in planning fund-raising and may participate in the management and investment of the

organization's funds, but shall not personally participate in the solicitation of funds or other fund-raising activities, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority;

(ii) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law, the legal system or the administration of justice;

(iii) shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or, except as permitted in Rule 4.C.3.b(i), if the membership solicitation is essentially a fund-raising mechanism;

(iv) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation.

#### D. *Financial Activities*

1. A judge shall not engage in financial and business dealings that:

- a. may reasonably be perceived to exploit the judge's judicial position, or
- b. involve the judge in frequent transactions or continuing business relationships with those lawyers, advocates or other persons likely to come before the court on which the judge serves.

2. A judge may, subject to the requirements of this Code, hold and manage investments of the judge and members of the judge's family, including real estate, and engage in other remunerative activity.

3. A judge shall not serve as an officer, director, manager, general partner, advisor or employee of any business entity except that a judge may, subject to the requirements of this Code, manage and participate in:

- a. a business closely held by the judge or members of the judge's family, or
- b. a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.

4. A judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge shall divest

himself or herself of investments and other financial interests that might require frequent disqualification.

5. A judge shall not accept, and shall urge members of the judge's family residing in the judge's household not to accept, a gift, bequest, favor or loan from anyone except for:

- a. a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;
- b. ordinary social hospitality;
- c. a gift from a relative or friend, for a special occasion, such as a wedding, anniversary or birthday, if the gift is fairly commensurate with the occasion and the relationship;
- d. a gift, bequest, favor or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under Rule 3;

e. a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;

f. a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; or

g. any other gift, bequest, favor or loan, only if: the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge; and, if its value exceeds \$150.00.

E. *Fiduciary Activities*

1. A judge shall not serve as executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary, except for the estate, trust or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties.

2. A judge shall not serve as a fiduciary if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

3. The same restrictions on financial activities that apply to a judge personally also apply to the

judge while acting in a fiduciary capacity.

F. *Service as Arbitrator or Mediator*

A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.

G. *Practice of Law*

A judge shall not practice law. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family.

H. *Compensation, Reimbursement and Reporting*

A judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety.

1. Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.

2. Expense reimbursement shall be limited to the actual cost of travel, food and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or guest. Any payment in excess of such an amount is compensation.



**JUDICIAL RULE 5: A JUDGE OR  
JUDICIAL CANDIDATE SHALL  
REFRAIN FROM INAPPROPRIATE  
POLITICAL ACTIVITY.**

**A. *All Judges and Candidates***

1. Except as authorized in Sections 5.B.2., 5.C.1., and 5.C.5, a judge or a candidate for election or appointment to judicial office shall not:

- a. act as a leader or hold an office in a political organization,
- b. publicly endorse or publicly oppose another candidate for public office;
- c. make speeches on behalf of a political organization;
- d. attend political gatherings or host campaign events; or
- e. solicit funds for, pay an assessment to or contribute to a political organization or candidate, or attend or host any political dinners or other functions.

2. A judge shall resign from judicial office upon becoming a candidate for a nonjudicial office either in a primary or in a general election, except that the judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention if the judge is otherwise permitted by law to do so.

3. A candidate for a judicial office:

- a. shall maintain the dignity appropriate to judicial office and act in a manner consistent with the impartiality, integrity and independence of the judiciary, and shall encourage members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as they apply to the candidate;
- b. shall prohibit employees and officials who serve at the pleasure of the candidate, and shall discourage other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under the Sections of this rule;
- c. except to the extent permitted by Section 5C(2), shall not authorize or knowingly, permit any other person to do for the candidate, what the candidate is prohibited from doing under the Sections of this Rule;
- d. shall not:
  - (i) with respect to cases, controversies, or issues that are likely to come before the court, make pledges, promises or commitments that are

inconsistent with the impartial performance of the adjudicative duties of the office;  
(ii) knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent;

e. may respond to personal attacks or attacks on the candidate's record as long as the response does not violate Section 5.A.3.d.

**B. *Candidates Seeking Appointment to Judicial or Other Governmental Office***

1. A candidate for appointment to judicial office or a judge seeking other governmental office shall not solicit or accept funds, personally or through a committee or otherwise, to support his or her candidacy.

2. A candidate for appointment to judicial office or a judge seeking other governmental office shall not engage in any political activity to secure the appointment.

a. a non-judge candidate for appointment to judicial office may, in addition, unless otherwise prohibited by law:

- (i) retain an office in a political organization,
- (ii) attend political gatherings, and

(iii) continue to pay ordinary assessments and ordinary contributions to a political organization or candidate and purchase tickets for political party dinners or other functions.

**C. *Judges and Candidates Subject to Public Election***

A judge or a candidate subject to public election may not, except as authorized by law at any time:

- 1. purchase tickets for and attend political gatherings;
- 2. identify himself or herself as a member of a political party; or
- 3. contribute to a political organization.

**APPLICATION OF THE CODE OF JUDICIAL CONDUCT**

A. Anyone, whether or not a lawyer, who is an officer of a judicial system and who performs judicial functions, including an officer such as a hearing officer or any person who shall so be given authority to maintain order in a formal setting; presiding over a matter and has responsibility to issue briefs, a judgement or final decision, is a judge within the meaning of this Code. All judges shall comply with this Code except as provided below.

B. *Pro Tempore Part-time Judge.* A pro tempore part-time judge is not required to comply.

C. *Time for Compliance.* A person to whom this Code becomes applicable shall comply immediately with all provisions of this Code and shall comply with these

Sections as soon as reasonably possible and shall do so in any event within the period of one year or until discharged from their role or until his/her successor is sworn into office.