

TITLE IV

NORTHERN CHEYENNE

RULES OF CIVIL PROCEDURE AND CIVIL CODE

TABLE OF CONTENTS

A. RULES OF CIVIL PROCEDURE

I. GENERAL PROVISIONS

- Rule 1: Scope of Rules
- Rule 2: Civil Contempt

II. COMMENCEMENT OF ACTION AND PRELIMINARY MATTERS

- Rule 3: Commencement of Action - Service of Process
- Rule 4: Time
- Rule 5: Pleadings, Motions and Orders
- Rule 6: General Rules of Pleadings
- Rule 7: Form of Pleadings
- Rule 8: Defenses and Objections
- Rule 9: Counterclaim or Cross-Claim
- Rule 10: Amendment of Pleadings
- Rule 11: Parties
- Rule 12: Intervention
- Rule 13: Substitution of Parties
- Rule 14: Discovery
- Rule 15: Pre-Trial Conference

III. TRIAL

- Rule 16: Jury Trials
- Rule 17: Assigning Cases for Trial
- Rule 18: Dismissal of Actions
- Rule 19: Consolidation: Separate Trials
- Rule 20: Evidence
- Rule 21: Subpoenas
- Rule 22: Jurors
- Rule 23: Special Verdicts and Interrogatories
- Rule 24: Instructions of the Jury: Arguments
- Rule 25: Motions for Directed Verdict and for Judgment Notwithstanding

the Verdict
Rule 26: Findings by the Court

IV. POST-TRIAL

Rule 27: Judgment Cost
Rule 28: Default
Rule 29: Summary Judgment
Rule 30: Entry of Judgment
Rule 31: New Trials: Amendments of Judgment
Rule 32: Relief from Judgment or Order
Rule 33: Harmless Error
Rule 34: Stay of the Proceeding to Enforce a Judgment
Rule 35: Injunctions
Rule 36: Extraordinary Writs
Rule 37: Execution of Judgments
Rule 38: Appeal

B. CIVIL CODE

I. GENERAL PROVISIONS

4-1-1 State of Montana Requests for Authority on the Northern
Cheyenne Reservation
4-1-2 Trespass by Non-Indians
4-1-3 Commitments

I. ALCOHOL/CHEMICAL DEPENDENCY COMMITMENT

1.1 Statement of Policy
1.2 Definitions
1.3 Standards for Commitment
1.4 Who May File Petition
1.5 Court Proceedings
1.6 Emergency Commitment
1.7 Procedural Rights
1.8 Severability
1.9 Right of Appeal

II. MENTAL COMMITMENT

2.1 Statement of Policy
2.2 Definitions

- 2.3 Standard for Commitment
- 2.4 Who May File Petition
- 2.5 Court Proceedings
- 2.6 Emergency Commitment
- 2.7 Procedural Rights
- 2.8 Severability
- 2.9 Right of Appeal

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

- 4-2-1 Who May be Excluded
- 4-2-2 Grounds for Exclusion
- 4-2-3 Notice of Proposed Exclusion
- 4-2-4 Hearing on Exclusion Before Northern Cheyenne Court
- 4-2-5 Appellate Proceedings
- 4-2-6 Proceedings for Enforcement of Orders of Exclusion
- 4-2-7 Physical Removal
- 4-2-8 Separability

nf.cmyfiles:0065:
l&oindex.4

NORTHERN CHEYENNE

RULES OF CIVIL PROCEDURE AND CIVIL CODE

A. RULES OF CIVIL PROCEDURE

I. GENERAL PROVISIONS

Rule 1: Scope of Rules

A. Scope [*As amended by Ord. DOI 3(98)*]

Except when different rules prescribed in this 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. One Form of Action

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

Rule 2: Civil Contempt

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

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

1. Disorderly, contemptuous or insolent behavior in presence and view of the Court that interrupts proceedings or impairs respect of the Court's authority;
2. Breach of peace, noise, or other disturbance interrupting proceedings;
3. Willful disobedience or resistance to any process of the Court or order issued by the Court;
4. Misbehavior or other willful neglect or violation of duty of an attorney or lay counselor, directed by the Court to perform or refrain from performing some act or service; [*As amended by Ord. DOI 3(98)*]

5. Acting as an officer, spokesman or other official of the Court without authority;
6. Publication of false or grossly inaccurate report of Court proceedings;
7. Requesting a jury trial and failing to appear on the date the jury trial is scheduled; or
8. Any other interference with the process, proceeding, or [cont'd on p. IV-4].

nfcmjfiles:00651&o:
l&ocodc4.3

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

B. Procedures in Contempt

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

C. Penalty [As amended by Ord. DOI 3(98)]

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.

II. COMMENCEMENT OF ACTION AND PRELIMINARY MATTERS

Rule 3: Commencement of Action - Service of Process

A. Commencement of Action

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

B. Service of Process

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

1. The summons shall be signed by a Judge or the Clerk, be under the seal of the Court, contain the names of the parties, be directed to the defendant and state the name and address of the plaintiff or his attorney or representative in the action.
2. The return of service shall be endorsed with the name of the person serving and the date, time, and place of service shall be filed with the Clerk.

3. Service may be made on a party by delivering the summons and complaint to the party himself or upon some person of suitable age and discretion over 14 years old at the party's home or principal place of business, or an [*cont'd on p. IV-5*]

n:\cm\files\00651&co:
l&ocode4.4

- officer, managing agent, or partner of a person.
4. If the party cannot be found within the exterior boundaries of the Northern Cheyenne Reservation, service may be had by certified mail with delivery restricted to the party to be served.
 5. Service by publication may be made upon order of the Court for good cause shown by publishing the contents of the summons in a local newspaper of general circulation at least once a week for four weeks and by leaving an extra copy of the complaint or paper with the Court for the party.
 6. Service may be made by any law enforcement officer or other person, not a party, 18 years of age or older.
 7. Service upon a person otherwise subject to the jurisdiction of the Northern Cheyenne Court may be made anywhere in the United States; otherwise, service shall be made within the exterior boundaries of the Northern Cheyenne Reservation.
[As amended by Ord. DOI 3(98)]
 8. If a person refuses to accept service, service shall be deemed performed if the person is informed of the purpose of the service and offered copies of the papers served.
 9. All papers required to be filed shall be served as under this rule or, except for the complaint, may be served on the counselor or attorney of a party. Service of all papers except the complaint may be made by mail, first class postage, prepaid and properly addressed.
 10. Enforcement of service of process, judgments, warrants and any other exercise of civil authority of County or State, shall first be brought before the Northern Cheyenne Court for review. If justice so warrants, the Court shall order the Northern Cheyenne Police to implement such proceedings.
 11. Service upon a state shall be upon the Secretary of State.
 12. Service upon any branch or agency of the federal government shall be upon the Secretary of State or the head of the agency.

Rule 4: Time

A. Computation

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

B. Enlargement.

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

C. Notice of Motions.

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

D. Service by Mail.

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

Rule 5: Pleadings, Motions, Orders.

A. Pleadings.

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

B. Motions and Orders.

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

Rule 6: General Rules of Pleading.

A. Claims for Relief.

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

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

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

B. Defense.

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

C. General Contents of Claims and Defenses.

Claims and defenses shall be simple, concise and direct.

D. Affirmative Defenses.

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

E. Construction of Pleadings.

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

Rule 7: Form of Pleadings.

A. Caption.

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

B. Paragraphs.

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

C. Paper Used in Pleading.

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

Rule 8: Defenses and Objections.

A. When Presented.

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

B. Motions.

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

Rule 9: Counterclaim or Cross-claim.

A. Counterclaim.

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

B. Cross-claim.

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

C. Third Party Claim.

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

Rule 10: Amendment of Pleadings.

A. Amendment Before Trial.

A party may amend his pleadings once before the opposing

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

B. At Trial.

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

Rule 11: Parties.

A. Real Party in Interest.

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

B. Guardian Ad Litem.

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

C. Joinder of Claims.

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

D. Joinder of Parties.

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

Rule 12: Intervention.

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

Rule 13: Substitution of Parties.

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

Rule 14: Discovery.

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

B. Deposition.

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

C. Production, Entry, or Inspection.

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

D. Scope of Discovery.

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

E. Protective Order.

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

F. Failure to Make Discovery.

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

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

G. Use of Discovery.

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

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

Rule 15: Pre-Trial Conference

A. Purpose

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

B. Who Attends

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

C. Conduct of Conference

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

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

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

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

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

III. TRIAL

Rule 16: Jury Trials

A. When Allowed [*As amended by Ord. DOI 3(98)*]

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

B. Issues Triable

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

C. Designation by Judge

1. A Judge may, upon his own motion, order the trial by a jury of any or all of the factual issues of a case regardless of whether or not the parties have requested such.
2. A Judge may, upon motion of any party or upon his own motion, find that some or all of the issues designated for jury trial are not properly triable to a jury, and order [*cont'd on p. IV-13*]

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. [*As amended by Ord. DOI 3(98)*]

Rule 17: Assigning Cases for Trial

A. Assignment of Judge and Date [*As amended by Ord. DOI 3(98)*]

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

Rule 18: Dismissal of Actions

A. Voluntary Dismissal

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

B. Involuntary Dismissal

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

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

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

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

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

Rule 19: Consolidation: Separate Trials.

A. Consolidation.

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

B. Separate Trials.

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

Rule 20: Evidence.

A. Form and Admissibility.

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

B. Examination and Cross Examination.

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

action. A party may impeach his own witness.

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

C. Physical Evidence.

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

D. Official Documents.

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

E. Record of Excluded Evidence.

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

Rule 21: Subpoenas.

A. Issuance.

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

B. Failure to Appear.

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

C. Subpoena Unnecessary.

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

attendance upon a subpoena.

Rule 22: Jurors.

A. Number of Jurors: Alternate.

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

B. Examination of Jurors.

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

C. Challenges.

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

D. Eligibility for Jury Duty.

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

E. Trial Juries.

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

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

F. Power to Excuse Jurors.

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

G. Compensation of Jurors.

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

H. Discharge of Juror.

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

I. View of Jury.

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

J. Separation of the Jury.

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

K. Deliberation.

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

L. Things Taken by Jury.

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

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

M. Additional Instructions.

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

N. No Verdict.

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

O. Declaration of the Verdict.

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

Rule 23: Special Verdicts and Interrogatories.

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

Rule 24: Instructions to the Jury: Arguments.

A. Instructions.

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

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

B. Arguments.

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

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

Motion For a Directed Verdict.

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

Rule 26: Findings by the Court.

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

IV. POST-TRIAL

Rule 27: Judgment: Cost.

A. Definition.

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

B. Judgment on Multiple Claims.

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

commence to run.

C. Demand for Judgment

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

D. Cost [As amended by Ord. DOI 3(98)]

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.

E. Attorney's Fees

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

Rule 28: Default

A. Entry of Default

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

B. Judgment by Default.

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

C. Setting Aside Default.

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

Rule 29: Summary Judgment.

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

Rule 30: Entry of Judgment.

A. Judgment.

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

B. Effectiveness: Recordation.

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

C. Death of a Party.

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

D. Satisfaction of Judgment.

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

E. Effect of Satisfaction: Limitation.

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

Rule 31: New Trials: Amendments of Judgment.

A. Grounds: Time.

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

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

B. Harmless Error.

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

C. Support for Motion.

Parties may include memoranda or affidavits in support of their

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

D. Court Initiative.

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

E. Motion to Alter or Amend Judgment.

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

Rule 32: Relief from Judgment or Order.

A. Clerical Mistakes.

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

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

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

Rule 33: Harmless Error.

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

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

A. Stay Upon Entry of Judgment.

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

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

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

C. Injunction Pending Appeal.

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

D. Stay Upon Appeal.

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

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

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

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

F. Power of the Appellate Court Not Limited [*As amended by Ord. DOI 3(98)*]

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 Rule 27(B), the Court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

H. Waiver of Undertaking

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

Rule 35: Injunctions

A. Preliminary Injunction Notice

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

B. Temporary Restraining Order; Notice; Rehearing; Duration

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

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

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

C. Security.

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

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

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

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

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

E. Grounds for Injunction.

An injunction may be granted:

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

Rule 36: Extraordinary Writs.

A. Grounds for Relief.

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

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

B. Habeas Corpus.

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

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

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

C. Habeas Corpus: Decision.

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

Rule 37: Execution of Judgments.

A. Time.

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

B. Property Subject to Writ of Execution.

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

C. Exemptions.

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

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

any other article necessary to enable any person to carry on the trade, occupation, or profession by which that person habitually earns his living to the value of \$2,500, including sufficient quantity of food to support the animals, if any, for six months;

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

D. Procedure for Identification.

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

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

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

E. Substance of Writs.

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

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

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

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

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

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

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

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

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

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

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

F. Redemption from Sale

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

G. Judgment Debtor's Property Owned with Another

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

Rule 38: Appeal [As amended by Ord. DOI 3(98)]

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 lower Trial Court may appeal in the manner prescribed by Chapters 3, 4 and 5 of Title II and this Rule.

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 lower Trial Court sufficient to guarantee performance of the judgment if such performance is stayed on appeal plus, in any event, an amount sufficient to guarantee payment of such costs or interest as the 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 lower Trial Court for an order staying the order, commitment or judgment rendered conditioned upon execution of a bond to guarantee performance of the judgment, order or commitment. A stay shall be granted in all cases in which it is requested unless manifest injustice would result therefrom.

E. Clerk

The 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.

B. CIVIL CODE

I. GENERAL PROVISIONS

4-1-1 State of Montana Requests for Authority on the Northern Cheyenne Reservation [As amended by Ord. DOI 3(98)]

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

4-1-2 Trespass by Non-Indians [As amended by Ord. DOI 3(98)]

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

n:\canyfiles\00651&o:
l&ocode434

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

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

4-2-1 Who May be Excluded

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

4-2-2 Grounds for Exclusion

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

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

4-2-3 Notice of Proposed Exclusion

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

4-2-2 Grounds for Exclusion

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

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

4-2-3 Notice of Proposed Exclusion [*As amended by Ord. DOI 3(98)*]

A Trial Judge of the Northern Cheyenne Court shall cause notice to be served personally or by registered mail upon any non-member whenever the Reservation Prosecutor petitions the Court for exclusion of the non-member. The notice shall state the reason for the proposed exclusion and shall name a time and place where the non-member may appear before a Trial Judge to show cause why he should not be excluded from the Northern Cheyenne Reservation. The hearing shall be not less than ten (10) days after service of the notice or mailing of the notice, whichever is later, provided that if the Judge shall have reasonable cause to believe an emergency exists, and the notice so states, the hearing may be held after twenty-four hours from the time of service or mailing, whichever is later.

4-2-4 Hearing on Exclusion Before Northern Cheyenne Court [*As amended by Ord. DOI 3(98)*]

After notice to the non-member proposed for exclusion, a Trial Judge shall hold a hearing to decide whether the non-member shall be excluded from the Northern Cheyenne Reservation. The non-member shall be given an opportunity to present his defense at such hearing and may be represented by counsel. After the hearing, or after the time set for the hearing, if after notice the non-member does not appear, the Trial Judge may order him excluded from the Northern Cheyenne [*cont'd on p. IV-51*]

Reservation, or may permit him to remain upon the Reservation on such conditions as the Trial Judge sees fit to impose. All orders of exclusion shall remain in force until revoked by the Northern Cheyenne Court unless the order specifically provides otherwise.

4-2-5 Appellate Proceedings [As amended by Ord. DOI 3(98)]

Appeals from any exclusion shall be to the Appellate Court.

4-2-6 Proceedings for Enforcement of Orders of Exclusion [As amended by Ord. DOI 3(98)]

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

4-2-7 Physical Removal [As amended by Ord. DOI 3(98)]

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

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

4-2-8 Separability

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



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

NORTHERN CHEYENNE AGENCY
LAME DEER, MONTANA 59043

NOV 15 1999

IN REPLY REFER TO:
Executive Direction
Code 100

Mr. Joe Walks Along, Sr., President
Northern Cheyenne Tribal Council
P.O. Box 128
Lame Deer, Montana 59043

Dear Mr. Walks Along,

Enclosed is the original of the Northern Cheyenne Tribal Ordinance No. DOI- 001 (2000) enacted by the Council on October 18, 1999, and received in this office on November 1, 1999.

Ordinance No. DOI- 001 (2000) - approves the amendment of Article II of the Northern Cheyenne Civil Code by adding the following: [Section II, 4-2-2.5 (A), B), (C), (D), (E)]

Although Ordinance No. DOI-001 (2000) approves the amendment of Article II of the Northern Cheyenne Civil Code, I have outlined some areas which merit clarification regarding existing [Section II], as it currently reads, and the newly added amendment [Section II 4-2-2.5 (A), (B), (C), (D), (E)].

1) Proposed [Section II, 4-2-2.5 Exclusion for Conviction of Drug Offense]. This proposed provision amends Article II of the Northern Cheyenne Civil Code by adding it to Section II. However numeric listings in the Civil Code [Section II] lists only [Section II, 4-2-1, Section II, 4-2-2 (A),(B),(C),(D),(E) and (F)]. Then it continues with [Section II 4-2-3]. There is no [Section 4-2-2.1, 2, 3, or 4]. If the intent was to add Ordinance 4-2-2.5 into this Section then there is no logical place to insert the proposed ordinance. Please advise as to where you would like this to be listed?

2) Proposed Northern Cheyenne Civil Code [Article II 4-2-2.5(A)] currently reads "*Except as provided under Section 4-2-1, any member or non-member of the Northern Cheyenne Tribe residing on the Northern Cheyenne Reservation that is convicted in any Court of any drug offense committed on or off the Northern Cheyenne Reservation shall be excluded from the Reservation for four (4) years, and non-members shall be permanently excluded. For purposes of this provision, the term "drug offense" shall mean a misdemeanor or felony conviction for growing, possessing, using, selling, distributing, manufacturing, transporting, gifting or for conspiracy to commit any of the foregoing, of any quantity of substance classified as belonging in Schedule I of the Federal Controlled Act; provided that this provision shall not apply to any conviction arising out of the use of peyote in the Native American Church*".

A. [Section 4-2-2.5(A)] specifically reads, "Except as provided under [Section 4-2-1], any member or non-member of the Northern Cheyenne Tribe...". In reviewing the Northern Cheyenne Tribal Law and Order Code [Section II, 4-2-1], it specifically refers to "Any non-member of the Northern Cheyenne Tribe". There should be a consistency of wording so when the proposed [Section II, 4-2-2.5(A)] is included and refers back to [Section II, 4-2-1] they would both read "Any member or non-member of the Northern Cheyenne Tribe". This would bring the proposed ordinance into consistency with the tribe's intent to include both members and non-members into the ordinance. Otherwise a "Member" of the Northern Cheyenne Tribe would have a valid defense because as it currently reads [Section II 4-2-1] does not pertain "Members" of the Northern Cheyenne Tribe.

B. Under proposed [Section II, 4-2-2.5 Exclusion for Conviction of Drug Offense], currently reads "provided that this provision shall not apply to any conviction arising out of the use of peyote in the Native American Church".

Does this also pertain to non-Native Americans? It appears that the non-Native Americans may not have been included in the "American Indian Freedom of Religious Act, of 1978. Since Native American rights are specifically protected regarding the use of peyote in the Native American Church.

Is it the intent of the Northern Cheyenne Tribe to include non-members who are non-Native American if they were convicted of a criminal offense regarding the use and/or mis-use of peyote inside or outside the Native American Church if you are not protected by the American Indian Freedom of Religious Act, 1978?

3. Proposed [Section II, 4-2-2.5(B)] reads "*Upon confirmation of an off-reservation conviction, the Tribal Prosecutor shall immediately initiate an exclusion proceeding against any Northern Cheyenne Reservation resident that has been convicted of a drug offense by an off-Reservation Court. In determining whether exclusion is warranted, the Tribal Court may not consider the merits of the underlying conviction. The only issues that may be determined by the Tribal Court shall be whether due process was afforded the defendant by the off-Reservation Court and whether the defendant has a defense under Section 4-2-1. If the tribal court finds that due process was afforded the Defendant and that the Defendant does not have a defense under Section 4-2-2, the individual shall be excluded for four (4) years*".

A. What provisions would be in place should the individual resident be an adolescent?

B. In referring to proposed [Section 4-2-2-5.B] "*whether the defendant has a defense under [Section 4-2-1]*". Northern Cheyenne Civil Code [Section 4-2-1] currently reads "Any non-member of the Northern Cheyenne Tribe..." if this is not amended to reflect the change as cited above #2-A to read "Any member or non-member of the Northern Cheyenne Tribe" then a "Member" of the Northern Cheyenne Tribe could use this as a means of defense since [Section II, 4-2-1] specifically refers to "non-members of the Northern Cheyenne Tribe".

C. Proposed [Section II 4-2-2.5(B)] further states, “If the tribal court finds that due process was afforded the Defendant and that the Defendant does not have a defense under Section 4-2-2, the individual shall be excluded for four (4) years”. A final defense of a member of the Northern Cheyenne Tribe would be to challenge [Section II 4-2-2 Grounds for Exclusion] since it reads “Non-members may be excluded...”. Again this would be interpreted to exclude “Members of the Northern Cheyenne Tribe”.

4. Proposed [Section II, 4-2-2.5(C)] currently reads “Exclusion shall automatically be imposed upon a conviction of an on-Reservation drug offense tried in the Tribal Court and a finding that the defendant does not have a defense under [Section 4-2-1]. Time spent in the Tribal jail from the date of the imposition of the exclusion order shall count towards time served on said order.”

A. The Northern Cheyenne Law & Order Code [Section II, 4-2-1] currently reads “Any non-member of the Northern Cheyenne Tribe...” therefore a “Member” of the Northern Cheyenne Tribe would have a valid defense to the proposed clause as [Section II, 4-2-1] specifically does not address “Members of the Northern Cheyenne Tribe”.

5. Proposed [Section II 4-2-2-5(D)] reads “Any person that owns non-trust land on the Reservation may raise this fact as a defense provided that the person owned the land prior to the arrest for the conviction. Ownership of non-trust land shall not be a defense to exclusion unless defendant purchased the land prior to the arrest for the conviction.”

A. The proposed section also states “unless defendant purchased the land prior to the arrest for the conviction”. Does this mean only “purchased” or should this be changed to read “acquired”? A person can own land before an arrest and conviction if the land was “inherited” or “gift deeded” without actually “purchasing” the land.

B. Would it matter if the person convicted of a drug offense actually resides on the non-trust land or simply owns a non-trust section of land and does not actually reside on it?

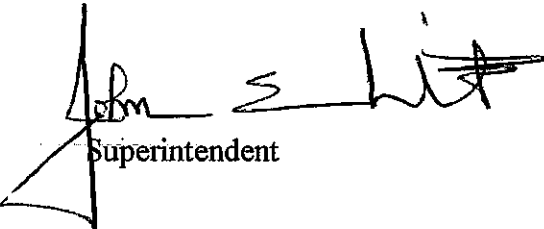
6. In reading the Northern Cheyenne Civil Code [Section II] in its entirety, you will note that [Section II 4-2-3 Notice of Proposed Exclusion], [Section II 4-2-4 Hearing on Exclusion before Northern Cheyenne Court], [Section II 4-2-6 Proceeding for Enforcement of Orders of Exclusion], [Section II 4-2-7 Physical Removal] all refer to “non-members” and make no mention of “members” of the Northern Cheyenne Tribe. I would recommend revisiting the entire [Section II] of the Northern Cheyenne Civil Code and make adjustments where necessary to accomplish the full intent of proposed Ordinance DOI-001.

The Northern Cheyenne Tribal Council has the authority to take this action via Section 1 (h), (r), (I) of the Northern Cheyenne Tribal Constitution.

Enclosed is a copy of the Northern Cheyenne Tribal Civil Code [Section II, EXPULSION AND EXCLUSION OF NON-MEMBERS FROM THE NORTHERN CHEYENNE INDIAN RESERVATION] in its entirety.

All necessary copies of this resolution have been retained for our files.

Sincerely,



Superintendent

Enclosure

chrono
NCT
Ordinance file
subject file
RVallie:11/12/99x8201

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

ORDINANCE NO. DOI-001 (2000)

AN ORDINANCE OF THE NORTHERN CHEYENNE TRIBAL COUNCIL AMENDS ARTICLE II OF THE NORTHERN CHEYENNE CIVIL CODE TO PROVIDE FOR THE EXCLUSION OF INDIVIDUALS CONVICTED FOR A DRUG OFFENSE.

WHEREAS, the Northern Cheyenne Tribal Council is the governing body of the Northern Cheyenne Reservation by authority of the Amended Constitution and Bylaws as approved by the Secretary of the Interior on May 31, 1996; and,

WHEREAS, the Tribal Constitution charges the Tribal Council with the duty to protect the health and general welfare of the Tribe; and,

WHEREAS, the Tribal Council recognizes that there is widespread drug use on the Northern Cheyenne Reservation by members and non-members alike; and,

WHEREAS, the Tribal Council further recognizes that the drug activity on the Northern Cheyenne Reservation poses a very serious problem that threatens and health and welfare of the Tribe and its members; and,

WHEREAS, the Tribal Council has the power to exclude all persons not legally entitled to reside on the Northern Cheyenne Reservation; and,

WHEREAS, the Tribal Council believes it is absolutely necessary for it to exercise its exclusion power and take a firm stand against drugs by enacting a law that will discourage drug activity by residents of the Northern Cheyenne Reservation.

NOW, THEREFORE BE IT ORDAINED that the Northern Cheyenne Tribal Council hereby amends Article II of the Northern Cheyenne Civil Code by adding the following section:

4-2-2.5 Exclusion For Conviction Of Drug Offense

A. Except as provided under Section 4-2-1, any member or non-member of the Northern Cheyenne Tribe residing on the Northern Cheyenne Reservation that is convicted in any Court of any drug offense committed on or off the Northern Cheyenne Reservation shall be excluded from the Reservation for four (4) years, and non-members shall be permanently excluded. For purposes of this provision, the term "drug offense" shall mean a misdemeanor or felony conviction for growing, possessing, using, selling, distributing, manufacturing, transporting, gifting or for conspiracy to commit any of the foregoing, of any quantity of substance classified as belonging in Schedule I of the Federal Controlled Act; provided that this provision shall not apply to any conviction arising out of the use of peyote in the Native American Church.


B. Upon confirmation of an off-reservation conviction, the Tribal Prosecutor shall immediately initiate an exclusion proceeding against any Northern Cheyenne Reservation resident that has been convicted of a drug offense by an off-Reservation Court. In determining whether exclusion is warranted, the Tribal Court may not consider the merits of the underlying conviction. The only issues that may be determined by the Tribal Court shall be whether due process was afforded the defendant by the off-Reservation Court and whether the defendant has a defense under Section 4-2-1. If the Tribal Court finds that due process was afforded the Defendant and that the Defendant does not have a defense under Section 4-2-2, the individual shall be excluded for four (4) years.

C. Exclusion shall automatically be imposed upon a conviction of an on-Reservation drug offense tried in the Tribal Court and a finding that the defendant does not have a defense under Section 4-2-1. Time spent in the Tribal jail from the date of the imposition of the exclusion order shall count towards time served on said order.


D. Any person that owns non-trust land on the Reservation may raise this fact as a defense provided that the person owned the land prior to the arrest for the conviction. Ownership of non-trust land shall not be a defense to exclusion unless defendant purchased the land prior to the arrest for the conviction.

E. A person excluded from the Reservation may only enter the Reservation to seek to quash an exclusion order. An individual excluded from the Reservation under this Section shall remain excluded until such time they certify with the Tribal Court that they have successfully attended and completed a ninety (90) day drug treatment program and the Tribal Court quashes the exclusion order. A certification shall set forth the individual's name, the date he/she was excluded, the name of the treatment program successfully completed, and the date it was completed. Upon certification, the Tribal Court Clerk shall notify the Tribal Prosecutor of the certification and set a date for a certification hearing. The Tribal Prosecutor shall investigate and confirm or rebut the information provided on the certification at the certification hearing. Upon finding that the individual successfully completed a ninety (90) day drug treatment program, the Tribal Court shall issue an order quashing the exclusion order.

PASSED, ADOPTED AND APPROVED by the Northern Cheyenne Tribal Council by 9 votes for passage and adoption and 0 votes against passage and adoption on this 18th day of October 1999.


Joe Walks Along, Sr., President
Northern Cheyenne Tribal Council

ATTEST:


Sharlene Evans, Secretary
Northern Cheyenne Tribal Council

APPROVED: 
SUPERINTENDENT NOV 15 1999



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS .

NORTHERN CHEYENNE AGENCY

LAME DEER, MONTANA 59043

C95-055
4/14/85

JAN 19 1988

44-5

IN REPLY REFER TO:
TRIBAL OPERATIONS

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

Dear Mr. Bailey:

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

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

I have reviewed and approve this Ordinance.

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

Sincerely,

John P. ...
Superintendent

Attachment

a 137,101,100

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

ORDINANCE NO. 10 (88)

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

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

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

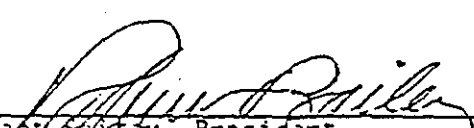
WHEREAS: recently the Indian Health Service negotiated an agreement with the State of Montana whereby IHS will pay the State for expenses incurred by the State when tribal people are committed, and

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

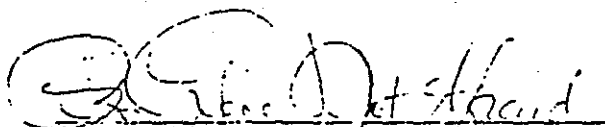
SO BE IT ORDAINED by the Northern Cheyenne Tribal Council that the attached ordinance is hereby accepted and adopted by the Northern Cheyenne Tribal Council, to be effective March 1, 1988.

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

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


Robert Bailey, President
Northern Cheyenne Tribal Council

ATTEST:


Eugene Not Afraid, Secretary
Northern Cheyenne Tribal Council

APPROVED:

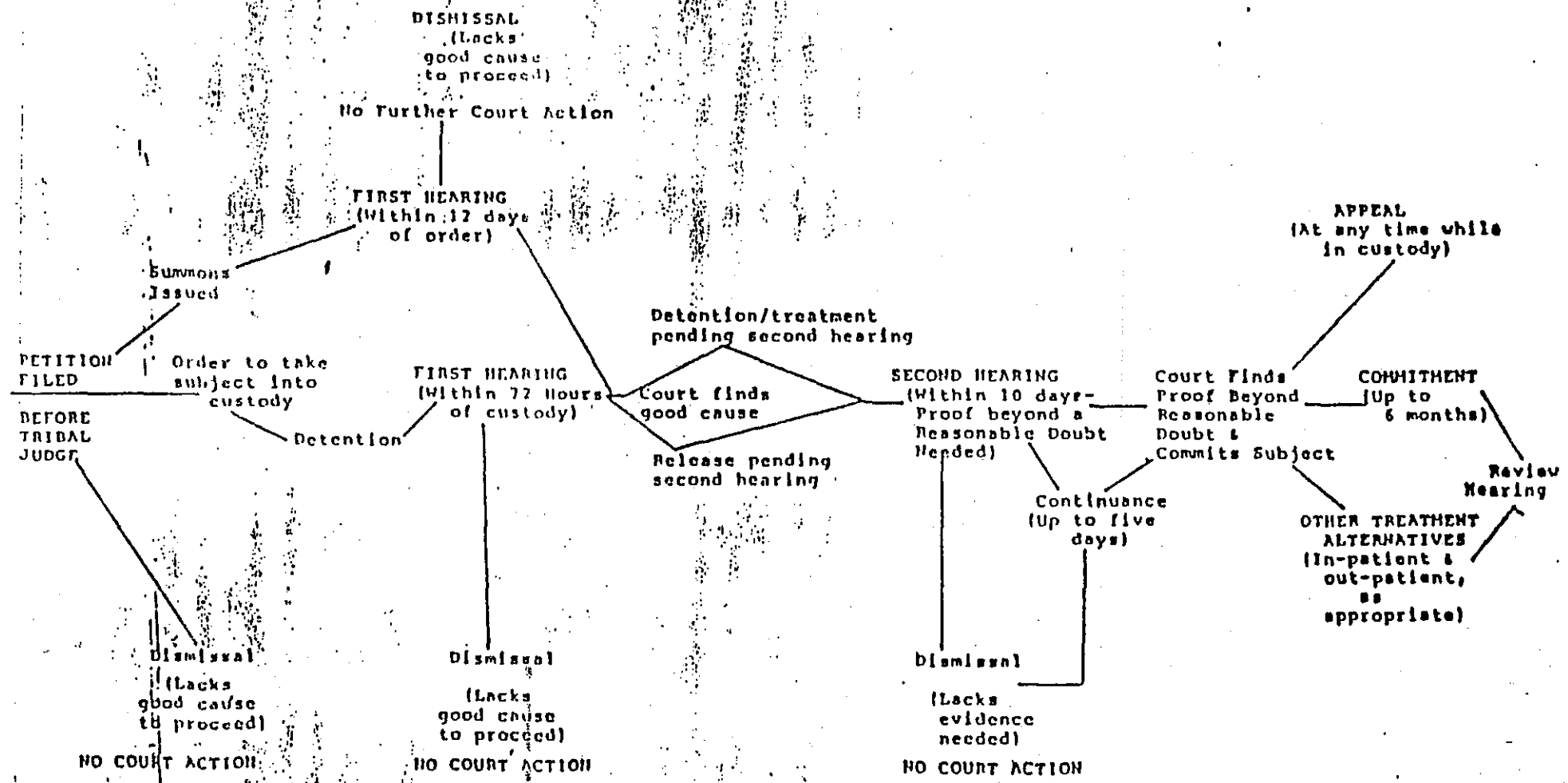

SUPERINTENDENT

4-1-3 COMMITMENTS

TABLE OF CONTENTS

CODE SECTION	PAGE
I. ALCOHOL/CHEMICAL DEPENDENCY COMMITMENT	1
1.1 Statement of Policy	1
1.2 Definitions	1
1.3 Standards For Commitment	2
1.4 Who May File Petition	3
1.5 Court Proceedings	3
(4) Proceedings Initiated Ex Parte	3
(5) Proceedings Initiated After Notice	5
1.6 Emergency Commitment	6
1.7 Procedural Rights	7
1.8 Severability	7
1.9 Right of Appeal	8
II. MENTAL COMMITMENT	9
2.1 Statement of Policy	9
2.2 Definitions	9
2.3 Standards For Commitment.....	9
2.4 Who May File Petition	10
2.5 Court Proceedings	10
(4) Proceedings Initiated Ex Parte	11
(5) Proceedings Initiated After Notice	12
2.6 Emergency Commitment	14
2.7 Procedural Rights	14
2.8 Severability	15
2.9 Right of Appeal	15

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



I. ALCOHOL/CHEMICAL DEPENDENCY COMMITMENT

1.1. STATEMENT OF POLICY

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

1.2 DEFINITIONS

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

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

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

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

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

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

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

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

1.3 STANDARDS FOR COMMITMENT

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

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

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

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

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

1.4 WHO MAY FILE PETITION.

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

1.5 COURT PROCEEDINGS.

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

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

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

(4) Proceedings Initiated Ex Parte.

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

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

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

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

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

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

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

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

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

(5) Proceedings Initiated After Notice.

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

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

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

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

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

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

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

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

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

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

1.6 EMERGENCY COMMITMENT.

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

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

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

1.7 PROCEDURAL RIGHTS.

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

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

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

(C) The right to question witnesses during hearings.

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

(E) The right to remain silent.

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

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

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

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

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

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

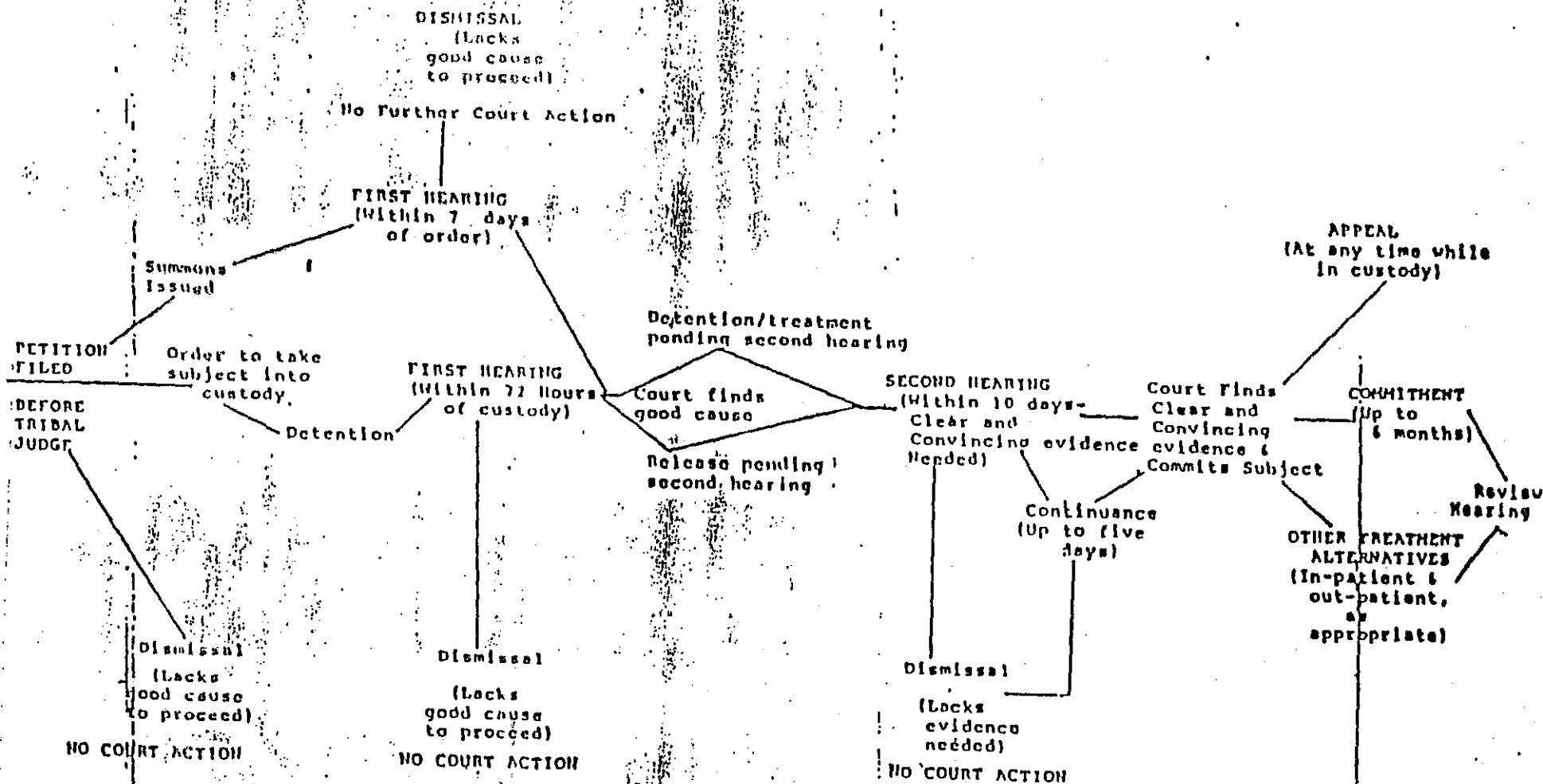
1.8 SEVERABILITY

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

1.9 RIGHT OF APPEAL

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

COMMITMENT---Seriously Mentally Ill



II. MENTAL COMMITMENT

2.1 STATEMENT OF POLICY

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

2.2 DEFINITIONS

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

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

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

2.3 STANDARDS FOR COMMITMENT

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

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

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

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

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

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

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

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

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

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

2.4 WHO MAY FILE PETITION.

Anyone with sufficient knowledge of an individual's circumstances to properly allege the facts required to be set forth in the petition by this ordinance may file a petition naming an individual, provided, such person has at least some first-hand knowledge of the subject of a petition. The Tribal Prosecutor shall provide assistance, as necessary, in the preparation of such petitions, and in the presentation of evidence to the court at required hearings.

2.5 COURT PROCEEDINGS.

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

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

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

(4) Proceedings Initiated Ex Parte.

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

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

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

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

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

(F) At the initial show cause hearing, provided for herein, the subject shall have an opportunity to challenge the allegations set forth in the petition. The court shall locate and appoint a "Friend of Respondent", who will assist, without remuneration unless such is available, the subject of a petition in challenging or contradicting the allegations of a petition. The subject of a petition may, in addition to the Friend of Respondent appointed by the court, secure, at his/her own expense, the services of a legal representative. Petitioner(s) shall be present, and if possible the Professional Person who has examined or evaluated the subject shall be present also. Should the subject be physically unable to appear, the court, upon entering a finding of such in open court, may postpone said hearing until such time as he/she can be present; provided, orders to take such individual into custody shall continue until such hearing. Such continuance shall not extend beyond the second hearing provided for in this ordinance, and may be consolidated with the second hearing, if such becomes necessary, as long as the court formally reviews the evidence before it at a properly noticed hearing.

(G) If after an initial show cause hearing the presiding judge finds that there is good cause to detain the subject in treatment/evaluation, he may order that such person be detained in treatment/evaluation for up to ten (10) calendar days. Within said ten (10) days, a second hearing shall be scheduled for the court to formally review the evidence to determine whether further treatment is necessary and whether to adjudge an individual as in need of such. At the second hearing, a finding that evidence in support of a finding that an individual is seriously mentally ill shall be supported by evidence meeting a "clear and convincing" standard of proof.

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

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

(5) Proceedings Initiated After Notice.

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

(B) When a summons is deemed appropriate, it shall direct the subject to appear at a show cause hearing to be set within seven (7) days of the filing of the petition, to determine whether further action is necessary. A copy of the petition, along with a statement of the subject's rights shall accompany the summons, and be personally served thereon by a police officer or authorized process server, or if such cannot be effected, by certified mail.

(C) At the initial show cause hearing, provided for herein, the subject shall have an opportunity to challenge the allegations set forth in the petition. The court shall locate and appoint a "Friend of Respondent", who will assist, without remuneration unless such is available, the subject of a petition in challenging or contradicting the allegations of a petition. The subject of a petition may, in addition to the Friend of Respondent appointed by the court, secure, at his/her own expense, the services of a legal representative.

Petitioner(s) shall be present, and if possible the Professional Person who has examined or evaluated the subject shall be present also. Should the subject be physically unable to appear, the court, upon entering a finding of such in open court, may postpone said hearing until such time as he/she can be present; provided, orders to take such individual into custody, if any, shall continue until such hearing. Such continuance shall not extend beyond the second hearing provided for in this code, and may be consolidated with the second hearing, if such becomes necessary, as long as the court formally reviews the evidence before it at a properly noticed hearing.

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

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

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

(6) The time limits provided for herein after the initial show cause hearing may be specifically waived in writing by the subject of a petition or his/her authorized representative, provided the court is convinced that said individual is capable of understanding the effects of such waiver.

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

(8) In addition to other rights reserved to a subject, such individual may move the court to hold additional hearings or to postpone hearings

as such may be necessary to prepare and/or present relevant evidence on their condition.

2.6 EMERGENCY COMMITMENT.

(1) If the petitioning process described above is not reasonably available, a licensed physician or peace officer may detain an individual who appears to be seriously mentally ill, as defined herein, and appears to be a danger to him/herself or the public. Such individual shall be held in the least restrictive environment necessary to protect him/her and/or the public. If the only alternative available is jail, said person shall be held only until said person is no longer creating a risk to him/herself or others or an appropriate court order for detention is obtained, whichever exists first.

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

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

2.7 PROCEDURAL RIGHTS.

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

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

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

(C) The right to question witnesses during hearings.

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

(E) The right to remain silent.

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

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

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

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

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

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

2.8 SEVERABILITY

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

2.9 RIGHT OF APPEAL

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