

**DRAFT**  
**REVISED NORTHERN CHEYENNE LAW &  
ORDER CODE**

**TITLE 4**  
**RULES OF CIVIL PROCEDURE AND CIVIL  
CODE**

TITLE 4

RULES OF CIVIL PROCEDURE AND CIVIL CODE

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## TITLE IV

### RULES OF CIVIL PROCEDURE AND CIVIL CODE

#### A. RULES OF CIVIL PROCEDURE

##### I. GENERAL PROVISIONS

###### Rule 1: Scope of Rules

- A. Scope. These rules will govern the procedures of the Northern Cheyenne Tribal Court (hereinafter the “Court”) in all actions, suits and proceedings of a civil nature, except when different rules prescribed in this Law and Order Code specifically apply.
- B. Construction. These rules will be liberally construed to secure a just, speedy and inexpensive determination of every action.
- C. One Form of Action. There will be one form of action known 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 the 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;
  - 5. Acting as an officer or official of the Court without authority;
  - 6. Publication of false or grossly inaccurate report of Court proceedings;
  - 7. Requesting a jury trial and failing to appear on the date the jury trial is scheduled; or
  - 8. Any other interference with the process, proceeding or dignity of the Court or Judge of the Court while performing official duties.
- B. Proceedings 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 will be determined at a hearing by the Court in which the person accused of contempt is given notice and an opportunity to be heard.
  3. There will be no jury trials in contempt hearings.
- C. Penalty. A Trial Judge (hereinafter “Judge”) may issue any order necessary to allow the person to purge himself of contempt and may impose a sentence of up to five (5) days imprisonment and/or a fine of up to \$500.00 plus costs, as determined by the Court.

## 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 will 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 will 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 twenty (20) days or a default judgment will be entered against him.
1. The summons must 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 must be endorsed with the name of the person serving and the date, time and place of service must 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 fourteen (14) years old at the party’s home or principal place of business, or an officer, managing agent, or partner of a person.
  4. If the party cannot be found within the exterior boundaries of the Northern Cheyenne Reservation, service may be had by certified mail with delivery restricted to the party to be served.
  5. Service by publication may be made upon order of the Court for good cause shown by publishing the contents of the summons in a local newspaper of general circulation at least once a week for four (4) consecutive 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, eighteen (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 must be made within the exterior boundaries of the Northern Cheyenne Reservation.
8. If a person refuses to accept service, service will 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 will be served as under this rule or, except for the complaint, may be served on the lay 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, must first be brought before the Northern Cheyenne Court for review. If justice so warrants, the Court may order the Northern Cheyenne Police to implement such proceedings.
11. Service upon a state will be upon the Secretary of State.
12. Service upon any branch or agency of the federal government will be upon the Secretary of State or the head of the agency.

Rule 4:      Time

- A. Computation. In computing any period of time in this Code, the day on which the period is to commence will not be counted and the last day of the period will be counted. Saturdays, Sundays, legal tribal and federal holidays will not be counted. Business Day means regular workdays: Monday, Tuesday, Wednesday, Thursday and Friday. Days when the Tribal Court is deemed on Administrative Leave will not be counted.
- B. Extensions. Unless prohibited, the Court may enlarge the prescribed period of time within which any required act may be done for good cause shown.
- C. Notice of Motions. Written motions and notice of hearing other than ones which may be heard *ex parte*, must be served not later than five (5) days prior to the time specified for hearing.
- D. Service by Mail. Whenever service is accomplished by mail, three (3) business days will be added to the prescribed period of time, but such an addition will 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. The plaintiff's filing will be a complaint; and the defendant's filing will be 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 must be by motion and must be in writing, unless made orally during a hearing or trial, and must set forth the relief or order sought and the grounds to support, with particularity. A motion and notice of motion may 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 will 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 must contain:
1. A short and plain statement of the grounds upon which the Court has jurisdiction to hear and decide the matter, 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. The claim for relief can be in the alternative or for several types of relief.
- B. Defense. A party must answer a complaint in simple terms, stating his defense to each claim and must admit or deny each claim. If the party does not have information to know the truth of a claim he must state so and that statement will have the effect of a denial.
- C. General Contents of Claims and Defenses. Claims and defenses are to be simple, concise and direct.
- D. Affirmative Defenses. Matters constituting an affirmative defense or avoidance must be affirmatively stated. 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 will be construed so as to do substantial justice.

Rule 7: Form of Pleadings

- A. Caption. Every pleading must contain a caption heading which includes: 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 must 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. Numbered Paragraphs. All claims or defenses must 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. All pleadings and other papers filed in any action must be typed, double spaced, except for matters customarily single spaced, contain at least a two (2) inch top margin and one (1) inch 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 will have twenty (20) business 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 must be made within five (5) business days of receiving the opposing parties' pleadings and prior to answering a claim. An answer will not be due until ten (10) business 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 (20) business days from the date of service.

Rule 9: Counterclaim and 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 in his answer 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 twenty (20) days before the case is scheduled for trial. The opposing party may respond, if appropriate, and the trial date be delayed if necessary. Amendments may be allowed by the Court upon request.
- 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 will 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 must appoint a guardian ad litem to represent such person in the suit or action.
- C. Joinder of Claims. A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join as many claims as he has against an opposing party or co-party.
- D. Joinder of Parties. To the greatest extent possible all persons or parties interested in a particular action may be joined in the action, but failure to join a party over whom the Court has no jurisdiction will not require dismissal of the action unless it would be impossible to reach a just result without such party; otherwise, the failure to join a party may be taken into account to assure that justice is done.

Rule 12: Intervention. A person may intervene and be treated in all respects as a party to an action in cases in which property in which he has an interest may be affected or a question of law or fact common to a claim of his may be litigated.

Rule 13: Substitution of Parties. If a party dies or becomes incompetent or transfers his interest or separates from some official capacity, a substitute party may be joined or substituted as justice requires.

Rule 14: Discovery

- A. Interrogatories. A party may submit written interrogatories to any other party who must answer them in writing, under oath, within twenty-five (25) business days of receipt. Failure to answer



interrogatories will be deemed admissions or otherwise in favor of the submitting party upon a show cause hearing to determine the reasons for failing to answer.

- B. Deposition. A party may take the oral deposition of an adverse party or non-party witness under oath after providing not less than ten (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 must within twenty-five (25) days reply as to whether or not such will be allowed and, if not, why not.
- D. Scope of Discovery. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the pending action, whether or not such would be admissible at trial, if such appears reasonably calculated to lead to the discovery of admissible evidence; except that discovery may not be had of the work product of a party's counselor or attorney.
- E. Protective Order. A party against whom discovery is sought may move the Court for a protective order to prevent undue annoyance, harassment, embarrassment, oppression or undue burden or expense, and the Court may order that the discovery cease or proceed only upon specified conditions.
- 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 great than one hundred (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 will be held at least ten (10) 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 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 will be made except for the Order and Memorandum of Pre-Trial Conference. No statements made at the Conference by any person will 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 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 will 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 will supersede pleadings for the purpose of framing issues for trial.

### III. TRIAL

#### Rule 16:

#### Jury Trials

- A. When Allowed. A party may request a trial by jury in all civil actions involving a claim or claims exceeding \$500 except domestic relations cases, cases involving adoptions, probate, minors, incompetence, hearings on court orders, contempt, or cases in the Supreme Court. The request for jury trial must be filed, along with a fee of \$10.00, no less than twenty-five (25) days prior to the scheduled date of trial. The Jury fee may be adjusted by the Chief Trial Judge when appropriate.
- B. Issues to be Tried. Unless the requesting party specifies otherwise, all factual issues properly triable by a jury will 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, at least five (5) days before the date scheduled for trial, any other issues he wishes to be so tried. Once any or all issues of a case have been requested for a jury trial, such request may not be withdrawn without the consent of all of the parties.

C. Designation by Judge

1. A Judge may, upon his own motion, order the trial by a jury of any or all of the factual issues of a case regardless of whether or not the parties have requested such.
2. A Judge may, upon motion of any party or upon his own motion, find that some or all of the issues designated for jury trial are not properly triable to a jury, and order that no jury trial be held on such issues.
3. A Judge may hear and decide an issue 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.

Rule 17: Assigning Cases for Trial

- A. Assignment of Judge and Date. The Chief Trial Judge will designate who will hear a case. The designated Judge must assign a trial date for the earliest reasonable time.
- B. Postponement. Upon motion of a party and the showing of good cause, the Court may in its discretion postpone a trial or proceeding upon such terms as it deems just, including the payment of any costs occasioned by such postponement.

Rule 18: Dismissal of Actions

- A. Voluntary Dismissal. Prior to the responsive pleading of a party against whom a claim has been made or motion to dismiss or for summary judgment on such claim, the party making the claim may file a notice of dismissal and his claim will be deemed dismissed without prejudice. In all other circumstances a party may move the Court to dismiss his own claim and the Court will 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 may 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. Lack of jurisdiction;

2. Failure of the adverse party to pursue prosecution of his claim;
  3. Failure of the adverse party to comply substantially with these rules;
  4. Failure of the adverse party to comply with an order of the Court that affects the party's case;
  5. 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
  6. Whenever dismissal appears proper based upon a failure to prove a claim, such dismissal will be deemed an adjudication of the merits of the issue dismissed – unless the Court, 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 must be taken orally under oath, unless otherwise provided in these rules. All evidence admissible under the Northern Cheyenne Rules of Evidence will 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 will 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 must 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 may be admitted into evidence upon the testimony of an official having custody or official knowledge or without such testimony if the document or record or copy 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 must 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 will 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 will 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 will 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 will 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 will be entitled to three peremptory challenges.
3. Challenges for cause may 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 will in any event render a decision.

D. Eligibility for Jury Duty. Each year the Court Administrator or his designee will randomly choose a list containing the names and addresses of at least fifty (50) but not more than seventy-five (75) eligible jurors. Any resident, whether a member of the Tribe or not, of the Northern Cheyenne Reservation between the ages of eighteen (18) and seventy (70) who has not been convicted within one (1) year of a felony or misdemeanor under this Code will be eligible to be a juror. Judges, police officers, and other officers and employees of the Court will not be eligible to be jurors while employed.

E. Trial Juries. The Clerk will subpoena at least twelve (12) persons from the list of eligible jurors to appear and be available as jurors whenever a jury trial is scheduled in a civil or criminal matter. The selection from the list of eligible jurors will be by lot or some means of random, impartial selection.

F. Power to Excuse Jurors. The Judge assigned to hear a case will 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 will 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 will 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 must 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 must 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 its decision.
- K. Deliberation. Once the case is submitted to it, the jury will 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 will 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 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 will be retried.
- O. Declaration of the Verdict. When all or at least five (5) of the six (6) jury members agree on a verdict, they will inform the officer who must notify the Court. The jury will be conducted into the courtroom and the Clerk will call the jury roll; the verdict will be given in writing to the Clerk and then read by the Clerk of the Court; inquiry will 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 an insufficient number of jurors agree with the verdict, the jury will be sent out again to reconsider; otherwise, the verdict is complete and the jury will be dismissed. If the verdict is read or recorded incorrectly by the Clerk or foreman, the jury will 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 will inform the parties or their counsel of the instructions it intends to give and hear objections and rule on them out of the hearing of the jury.
- B. Arguments. Final arguments for the parties will be made after the jury has been instructed. The Court will not comment on the evidence of the case.

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

A party who has made a motion for a directed verdict which has been denied or not granted, may within ten (10) days after entry of judgment move to have the verdict and any judgment entered which is set aside and entered according to his motion for directed verdict; or if there has been no verdict, the party may move within ten (10) days after the jury has been discharged. A motion for a new trial may be made in the alternative. The Court will 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, failures to appear or otherwise waives his right to a hearing, findings of fact and conclusions of law must be made by the Court in support of all final judgments. Upon its own motion or the motion of any party within ten (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; Costs

- A. Definition. A judgment includes any final order from which an appeal is available and no special form of judgment is required.
- B. Judgment on Multiple Claims. When more than one claim for relief is presented in an action, however designated, a final judgment may be entered on less than all of such claims only upon the Court's specific finding that such is justified. Absent such a finding, an order or decision will not terminate the action as to any of the claims until all claims are finally decided, nor will the appeal period commence to run.
- C. Demand for Judgment.
  - 1. Generally. Except in the case of a default judgment, every final judgment must 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 cannot be different in kind, or exceed in amount, that specifically prayed for in the claim for relief.

D. Cost. Unless the Court otherwise directs, the Court must allow necessary costs and disbursements to the prevailing party or parties as a matter of course. The prevailing party must file with the Court a verified memorandum of his costs and necessary disbursements within five (5) days of the entry of judgment and serve a copy of such on the opposing party, and if such are not objected to within ten (10) days, they will be deemed to be a part of and included in the judgment rendered. The Supreme Court may award costs in a like manner.

E. Attorney's Fees

The Court will 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 is against the plaintiff the Court must 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 may 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 may 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 must be served at least ten (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 (2) days prior to the hearing.

Rule 30: Entry of Judgment

- A. Judgment. Judgment upon verdict of the jury must be signed by the Clerk and filed. All other judgments must be signed by the Judge and filed with the Clerk.
- B. Effectiveness; Recordation. A judgment is complete and must be deemed entered for all purposes when it is signed and filed as provided herein. The Clerk must 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 .
- 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 of 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 must file all satisfactions of judgment and note the amount in the register of action and the judgment docket.
- E. Effect of Satisfaction; Limitation. A judgment satisfied in whole, with such act being entered in the judgment docket, will cease to operate as such. A partial satisfied judgment or unsatisfied judgment will continue in effect for eight (8) years. An action to renew the judgment remaining unsatisfied may be maintained any time prior to the expiration of eight (8) years and will extend the period of limitations for one (1) additional eight (8) year period.

Rule 31: New Trials; Amendments to 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 ten (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 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 cannot 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 will be allowed if desired.
- D. Court Initiative. The Court may, on its own initiative, not later than ten (10) days after entry of judgment, order a new trial on any grounds assertable by a party to the action, and will specify reasons for so ordering.
- E. Motion to Alter or Amend Judgment. A motion to alter or amend a judgment must be served not later than ten (10) days after the 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 in arising from oversight or mission 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 Supreme Court, and while the appeal is pending with leave of the Supreme Court.
- 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 will 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 may 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 ten (10) days after the time of filing the notice of appeal. The stay is effective when the bond is approved and received by the Court.
- E. **Stay in Favor of the Tribe, or Agency.** 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 will be required from the appellant.
- F. **Power of the Supreme Court Not Limited.** The provisions in this rule do not limit any power of the Supreme 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 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 can be issued without notice to the adverse party.

B. Temporary Restraining Order; Notice; Rehearing; Duration

No temporary restraining order can 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 conducted. Every temporary restraining order granted without notice must be endorsed with the date and hour of issuance; and must be filed with the Clerk's office and entered of record; must define the injury and state why it is irreparable and why the order was granted without notice; and must expire by its terms within such time after entry, not to exceed fifteen (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 will the Court allow more than one extension of a temporary restraining order.

The reasons for the extension must be entered on record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction must 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 may proceed with the application for a preliminary injunction and, if he does not do so, the Court may dissolve the temporary restraining order. On two (2) days' notice to the party, as the Court may prescribe, the adverse party may appear and move its dissolution or modification and in that event

the Court will 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 will be issued 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 will be required of the Northern Cheyenne Tribe, or of an officer, or agency, of either; nor will 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 the 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 the court who must 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 must be specific in terms; must describe in reasonable detail, and not be 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 only:

1. When it appears by the pleadings on file that a party is entitled to the relief demanded, and such relief, or any portion, consists in enjoining the commission or continuance of some act complained or, 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 may 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 must, 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 specified, at which time the Court will proceed in a summary manner to hear the matter and render judgment accordingly. If the writ is not issued, the Court must state its reason in writing and file the same with the complaint, and deliver a copy 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 must 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. 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. The writ cannot be disobeyed for any defect of form or description of the person restrained or defendant, if enough is stated to show the meaning and intent.

C. Habeas Corpus; Decision

In each case, the Court, upon determining the case, must enter specific findings of fact and conclusions of law and judgment, in writing, and the same must be made a part of the record in the case. If the Court finds in favor of the complainant, it must 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 (5) years have passed since a judgment was entered, and no writ of execution has been issued, the Court may issue a writ of execution only if just and sufficient reasons are given for the failure to obtain a writ in the previous five (5) 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 thirty (30) days, or otherwise earned or inured to his benefit within the 30-day period; the 30-day period may be calculated 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 will 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 (6) 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 (6) months, and provisions actually provided for family use and necessary for the support of that person and family for six (6) 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, must, if possible, identify the property of the judgment debtor of value to satisfy the judgment. Such identification must be made by sworn affidavit, and cannot include exempt property.

The Court must 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 will be deemed a contempt of Court, and unless other interested parties (e.g., spouse, children, parent) come forward with the 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 reason 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 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 will 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 will direct the Police Department to proceed substantially as follows:

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

All money received at auction sales will be turned over to the Court Clerk for payment to the judgment creditor. The Court Clerk will 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 must give all purchasers a certificate of sale, and must 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 must 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 must order the judgment debtor to transfer all property as needed. Refusal of such order will 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 may 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 may 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 paragraph one (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 eight percent (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 may be allowed only if good reasons are shown.

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

Writs of execution will be enforceable against all individuals working on the Reservation, including Tribal and U.S. Government employees. All writs issued for the garnishment of wages will 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 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 must have the right to meet the highest bid at an auction sale, and obtain the judgment debtor's interest.
2. A partner's right in specific partnership property is exempt except on a claim against the partnership. If partnership property is attached for a partnership debt, the partners or any of them or the representatives of a deceased partner may not claim an exemption for that property under this rule.

Rule 38: Appeal

- A. Supreme Court. All appeals provided for by this Code or ordinances will be heard by the Supreme 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 in Title II of this Code.
- C. Bond on Appeal. At the time of filing the Notice of Appeal, the appellate must also file cash or a bond in an amount set in order 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 Supreme 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 will be granted in all cases in which it is requested unless manifest injustice would result.

- E. Clerk. The Court Clerk must also serve as the Clerk of the Supreme Court. The Clerk must prepare, certify and file with the Supreme Court all papers comprising the record of the case appealed. A separate docket must be maintained for the Supreme Court in which must be recorded each stage of the proceeding on each case appealed.

B. CIVIL CODE

Chapter 1. CIVIL TRESPASS, CIVIL PENALTIES, FORFEITURE AUTHORIZED, JURISDICTION, CIVIL TRESPASS ACTIONS, REMEDIES, REMOVAL OF TRESPASSERS, SEIZURE AND FORFEITURE OF PROPERTY, FORFEITURE PROCEEDINGS, ENFORCEMENT OF CIVIL PENALTIES, ADVOCATE FEES, TIME LIMITATION, AUTHORIZED LAW ENFORCEMENT OFFICERS,

4-1-1. Purpose.

- A. It is the duty and obligation of the Northern Cheyenne Tribe to safeguard, protect, manage, and administer the natural resources of the Tribe lands for the sole economic, cultural, and social benefit of the members of the Tribe. The peace, property, and public safety of all persons, both Indian and non-Indian, may be threatened by disruptive, destructive, negligent, or malicious acts.
- B. The Tribal Council possesses the inherent authority and constitutional obligation to protect the people, property, natural, historic and archeological resources, culture, land, water, riparian rights, livestock, and wildlife from any threat or conduct by any person which might diminish, denigrate, damage, injure, destroy or threaten tribal members, their, natural resources, or the social, cultural, religious, political or economic well-being of the tribe in any manner.
- C. To regulate such threats or conduct, and to provide relief to the Tribe and its individual members for damages which result, it is necessary that the provisions of this chapter be enacted to carry out and implement the purpose expressed in this section and to provide for remedies in the nature of civil sanctions and the seizure and forfeiture of property.

4-1-2. Civil Trespass. A person commits civil trespass if he or she, not being an enrolled member of the Northern Cheyenne Tribe, enters reservation lands or any land to which a life estate, an estate for years, or other possessory interest has been assigned to any person by the Tribal Council, any authorized subordinate entity of the Tribe, or the Northern Cheyenne Housing Authority, without the lawful consent or permission of the Tribal Council or the person who has such possessory interest in the land, or his designate, and engages in any action or conduct which is or may be detrimental to the interests of the Tribe or its members as described in Section 4-4-1 of this article, including but not limited to:

- A. cuts down, destroys or injures any wood, timber, plant, vegetation, or crops standing upon such land, or carries away or attempts to carry away

- any wood, timber, plant, crop or other vegetation from such land;
- B. discharges a firearm or releases an arrow from a bow or crossbow for the purpose of engaging in target practice or practice shooting;
  - C. engages in any act or attempted act of hunting, trapping or fishing;
  - D. digs, takes or carries away, or attempts to dig, take or carry away from Tribal lands or the land assigned to another as provided above, earth, soil, stone, minerals, attachments, water, or any other natural resource, including objects of historical or archeological interest or significance;
  - E. erects, puts up, fastens, prints, or paints upon Tribal land or the land assigned to another as provided above, any notice, advertisement, sign, or other writing, drawing or printed material designed to communicate to the general public;
  - F. dumps, deposits, places, throws or leaves rubbish, refuse, trash, debris, filthy or odoriferous objects, substances or other objects upon a highway, road, or any land;
  - G. opens, leaves down, damages or destroys a fence enclosing Tribal lands or the land assigned to an individual as provided above, or opens a gate, bar, or fence and leaves it open;
  - H. damages, destroys, or otherwise injures land, livestock; poultry, buildings, vegetation, crops, equipment or any property belonging to any person or the Tribe;
  - I. permits or allows livestock or any domesticated animal to enter upon or remain upon the land, whether or not such person directly or knowingly allowed such livestock or domesticated animal to enter or remain upon such land;
  - J. parks, drives, or allows to be parked or driven any motorized vehicle, including but not limited to all-terrain or any other vehicle designed for off-road recreational use;
  - L. refuses to leave land to which he has no reasonable claim or right of possession when requested to do so by any law enforcement officer authorized to enforce the provisions of this Code, or any person who has an assigned possessory interest in such land as provided above, or his

designate; or,

- M. any act which does or otherwise would constitute an offense contained in Title 7 of this Code, provided that the standard of proof necessary for the court to find the act unlawful under this chapter will be proof by a preponderance of the evidence, as in other civil cases.
- N. conducts or attempts to conduct any business or commercial activity in violation of the laws, ordinances or resolutions of the Tribe, or without authority granted by the President or the Tribal Council, or in violation of applicable state or federal laws.

4-1-3. Civil Penalties. Any person who as been found by the court to have committed any act of civil trespass within the Northern Cheyenne Indian reservation will be liable for:

- A. a civil penalty equal to any actual damages resulting from such act to be paid through the clerk of the court for the benefit of the Tribe or individual who suffered such damages; and,
- B. a mandatory penalty payable to the Northern Cheyenne Tribe through its Treasurer for deposit to the Tribe's General Fund for the benefit of the Tribe of not less than fifty dollars (\$50.00) nor more than ten thousand dollars (\$10,000.00) for each act of civil trespass; and,
- C. punitive damages to be paid through the clerk of the court for the benefit of the Tribe or the individual who suffered damages as deemed appropriate by the court for each act of civil trespass found to be intentional or willful, provided such punitive damages cannot exceed three (3) times the amount of actual damages determined pursuant to subsection (A) of this section.

4-1-4. Forfeiture Authorized.

- A. Any property used or which could reasonably have been used to commit any act of civil trespass, or used in aid of or in conjunction with the commission of an act of civil trespass, or any thing (including but not limited to, wild game and non-game animals, domestic animals, any vegetation or crop, green or dry wood or timber, or any rock or mineral) which was the object of or was intended to be the end result obtained from the commission of an act of civil trespass upon any land within the Northern Cheyenne Indian reservation will be subject to forfeiture as provided in this chapter. All forfeiture actions will be considered in rem, against the property only and not against any person. No person will be subject to civil penalties as provided in Section 4-1-3 merely because of an

ownership interest or secured interest in any property subject to forfeiture.

- B. Any game or non-game animal or domestic animal subject to seizure as authorized in subsection A of this section, if injured or dead, must be destroyed by the Tribal Police by any means which will render the hide and flesh of the animal unusable and which will not allow the carcass to constitute a health hazard, as soon as practicable, but in no case more than twenty-four (24) hours after seizure, provided that the seizing law enforcement officer or the Tribal Ranger must first photograph (by color print still photography or by videotape) the animal at the place where it was seized so as to preserve the scene where the animal was located and serve as evidence in any tribal court action under this Code which may result from the death or injury of such animal.

4-1-5. Jurisdiction. The Tribal Court will have jurisdiction to hear all actions properly brought under this chapter against any person.

4-1-6. Civil Trespass Actions. An action for civil trespass or forfeiture pursuant to this chapter must be commenced by the Tribal Prosecutor or such other person as the President may designate, who must file a complaint on behalf of the Northern Cheyenne Tribe. An action may be filed on behalf of any person having an interest in land or property located within the reservation if it is in the best interests of the Tribe.

Notice of the action must be given:

- A. as provided for in other civil actions; or,
- B. by any law enforcement officer authorized to enforce the laws and ordinances of the Northern Cheyenne Tribe, who may issue a civil summons prior to the filing of a complaint alleging civil trespass if such officer has reason to believe that civil trespass has been committed and the person alleged to have committed civil trespass, and to whom such civil summons is issued, is likely to remove himself from the reservation in order to avoid service or for any other reason. A civil summons issued by a law enforcement officer must specify the date, time and place for a hearing on the action, as well as an allegation specifying the violation.
- C. If a civil summons is issued by a law enforcement officer prior to the filing of a complaint pursuant to subsection B of this section, a complaint must be filed within seven (7) calendar days of the date of issuance unless the seventh day is a Saturday, Sunday or judicial holiday, and then the complaint must be filed by the end of the next judicial day, or the civil summons will be considered void.
- D. No defendant in an action alleging civil trespass will be required to answer questions during discovery or at trial (except on cross-examination if the



defendant testifies on his own behalf), the answers to which may be inculpatory regarding the alleged act of civil trespass.

- E. In any action for civil trespass, the Tribe has the burden of showing by a preponderance of the evidence that a civil trespass has occurred and that the defendant committed the act of civil trespass. The Tribe is not required to prove specific intent except in cases where punitive damages for intentional conduct are sought.

4-1-7. Remedies. After a hearing pursuant to the provisions for civil procedure contained Code, and upon a finding by the court that civil trespass has occurred and that the defendant did commit the act of civil trespass, the court may issue such order as will provide an appropriate remedy, including but not limited to:

- A. civil money penalties pursuant to 4-1-3;
- B. forfeiture proceedings in accordance with 4-1-9 and 4-1-10;
- C. a cease and desist order or other temporary or permanent injunction; and
- D. an order directing the owner of the property in violation to remove or modify the property or take such other action as to remedy the violation.

4-1-8. Removal Of Trespassers. Any person observed or reasonably suspected of unlawfully hunting, fishing, hiking, trapping, camping, cutting or collecting wood, peddling or doing any unauthorized commercial business on any land within the reservation, or otherwise engaging in any activity or conduct proscribed by the provisions of this article, may be forcibly removed and ejected from the reservation by a law enforcement officer.

4-1-9. Seizure And Forfeiture Of Property.

- A. Any property alleged in a properly filed complaint to be subject to forfeiture pursuant to 4-1-4 of this chapter may be seized by an authorized law enforcement officer upon order of the court pending disposition of the complaint.
- B. In the court's discretion after a hearing as provided in subsection D of this section, any property seized under this chapter may be released to a lawful owner or claimant upon the posting of a cash bond equal to no less than the value of the property nor more than two (2) times the value of the property. The bond posted must be available to be levied against if the owner does not return the property to the court upon order, or of the court determines that the property should be forfeited. If the court determines that the property should not be forfeited, any bond posted must be returned

to the party posting it.

- C. Any law enforcement officer authorized to enforce the laws of the Community may, without notice or court order, seize, confiscate and impound any firearm or other weapon, vehicle, or any other property subject to forfeiture under this chapter if:
1. the property seized presents a danger to persons, property, or wildlife within the reservation; or,
  2. the property is subject to being removed from the reservation; or,
  3. in the case of a firearm, there has been no tribal permit issued authorizing the possession of such firearm on the reservation.
- D. Any party claiming an interest in any property seized without notice or court order may request a court hearing regarding the disposition of such property.

4-1-10. Forfeiture Proceedings.

- A. Upon a finding that civil trespass has occurred, the court may authorize forfeiture proceedings as set forth in this section.
- B. If found to be necessary, the court may issue a writ of attachment, sequestration, injunction, or other appropriate writ in aid of, or necessary to, the action.
- C. Property subject to forfeiture and not otherwise released to an owner or claimant must be held for a period of sixty (60) days following a finding of civil trespass, during which period adequate notice in the manner and form prescribed by the court, whether by personal service, regular, certified or registered mail, publication, or otherwise, must be given to all parties which the court, after reasonable inquiry, has determined to have an interest in the property and pending forfeiture.
- D. During the sixty (60) day period that the property is held, any party claiming an interest in the property may file with the court a claim for the recovery of the property. The court, after a hearing for which the Tribe and all known interested parties have been given notice, must order the property restored or transferred to the claimant if such claimant proves by a preponderance of the evidence that:

1. (a) the claimant is a lawful owner of, has a valid, recorded security interest in, or has an ownership interest by operation of law in the property; or,  
  
(b) the possession, use or other act of the claimant is or was lawful;
2. the possession, use, or other act upon which forfeiture is sought was without the knowledge and consent of the claimant; and,
3. the property will not be used to commit future acts of civil trespass on the reservation.

E. If no claimant provides the proof required in subsection D of this section, the court must declare the property forfeited to the Northern Cheyenne Tribe. If the property forfeited is money, currency or other legal tender, the court must order it released to the Treasurer of the Tribe for deposit in the general fund of the Tribe; otherwise, the court must order the property:

1. destroyed by the law enforcement agency of the Tribe; or,
2. sold at public auction with any expenses of keeping and selling such property, and the amount of all valid liens established by a claim filed with the court by a lienholder or other secured party, paid out of the proceeds of the sale, with any balance credited to the general fund of the Tribe; or,
3. returned to the owner, lienholder or other secured party upon payment of expenses if the property is worthless, encumbered with liens in excess of its value, or otherwise a burdensome asset; or,
4. retained for official Tribal use with expenses for keeping and transferring such property to be paid by the Tribe.

4-1-11. Enforcement Of Civil Penalties.

A. Any civil penalty imposed as provided under 4-1-3 of this chapter must be a judgment against the defendant subject to enforcement, satisfaction or execution by the Tribal Court, and is an obligation of the defendant to the Northern Cheyenne Tribe. A civil penalty imposed will be deemed a lien upon any personal or other property of the defendant located within the

exterior boundaries of the Northern Cheyenne Indian reservation.

- B. When necessary, the Northern Cheyenne Tribe may bring suit or file an action for enforcement of a foreign judgment based on the tribal court judgment in any other court where the defendant or any property belonging to the defendant may be located without the exterior boundaries of the Northern Cheyenne Indian reservation as provided by the laws of such other jurisdiction.

4-1-12. Advocate Fees. The provisions of 4-1-24 (F) of this Code notwithstanding, no party may recover advocate fees or other court costs in any action for civil trespass or forfeiture under this chapter except as may be provided in another jurisdiction for enforcement of a judgment as provided in 4-1-11(B) of this chapter.

4-1-13. Time Limitation. An action for civil trespass where any property or thing was not seized must be filed with the court within six (6) months of the date the trespass occurred, was discovered, or reasonably should have been discovered. Any action not filed within such time is barred and the court does not have jurisdiction to hear the action.

4-1-14. Authorized Law Enforcement Officers. The term "law enforcement officer" as used in this Chapter includes all persons employed with the United States Department of Interior, Bureau of Indian Affairs, Branch of Law Enforcement Services; Northern Cheyenne Tribal Police Department; and such other persons as the Council may authorize by resolution.

Chapter 2. FOREIGN JUDGMENTS, FOREIGN ORDERS, FOREIGN SERVICES OF PROCESS, FOREIGN ARREST, EXTRADITION, EXECUTION ON JUDGEMENTS; PERMIT FOR NON-INDIANS/NON-TRIBAL MEMBERS.

4-2-1. State of Montana Requests for Authority on the Northern Cheyenne Reservation The Northern Cheyenne Trial Court may set a hearing to determine the validity of any County of Montana, State of Montana, or any other jurisdiction's service of process, arrest, extradition, judgment, execution upon a judgment or order. After a hearing, the Trial Court must, in writing, either deny or authorize the request. If authorized by the Trial Court the Northern Cheyenne Reservation Police Department must serve the process, make the arrest requested, process the extradition, execute the judgment, and help to enforce the various orders.

4-2-2. Permit Requirement for Non-Indians/Non-Tribal Members. All persons that are not members of the Northern Cheyenne Tribe, including non-Indians, individuals enrolled in another federally recognized Indian Tribe, must obtain a permit to be on or travel through lands of the Northern Cheyenne Tribe. Permits are issued by the Northern Cheyenne

Tribal Court for a fee. Failure to obtain a permit may lead to an individual's detainment until the offender can be turned over to the appropriate Federal authorities for prosecution and punishment and/or be subject to removal from the reservation.

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