

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

TITLE 5
RULES OF CRIMINAL PROCEDURE

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RULES OF CRIMINAL PROCEDURE

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TITLE 5

RULES OF CRIMINAL PROCEDURE

I. SCOPE, PURPOSE AND CONSTRUCTION

Rule 1: Scope, Purpose and Construction

- A. These rules will govern the procedure in the Trial Court of the Northern Cheyenne Court (hereinafter “Court”) for all cases involving criminal proceedings.
- B. These rules are intended to provide for a fair trial and the just determination of every criminal proceeding before the Court. All rules will be interpreted to provide simplicity and fairness in application, while eliminating unjustifiable expense and delay.
- C. Federal rules may be used as guidelines, where appropriate.
- D. The Northern Cheyenne Tribal Council authorizes the Bureau of Indian Affairs to use and enforce this Criminal Procedure Code.

II. PROCEEDINGS BEFORE TRIAL

Rule 2: Commencement of Criminal Proceedings

- A. Complaint. Criminal proceedings will be commenced by the Northern Cheyenne Trial Prosecutor (hereinafter “Prosecutor”) filing a written complaint with the Court. A complaint is the written statement of the essential facts constituting the offense charged. A criminal complaint cannot be accepted for filing unless it satisfies the requirements of Rule 2(B). Minor omissions or errors in the complaint will not be grounds for dismissal of the case unless significant prejudice against the defendant is shown.
- B. Contents of the Complaint.
 - 1. Affidavit(s) or sworn statement(s) made by a complaining witness stating the name of the person accused, if known, or a description of the accused, adequate for identification and the time, place and description of the actions leading to the complaint.
 - 2. The name(s) and code designation(s) of the offenses complained of. If the facts show more than one offense took place, each offense must be stated separately. Offenses may be charged using the language of the Code.
 - 3. The signature of the Prosecutor, and the Court Clerk and the date each signed.

Rule 3: Use of Complaint — Summons or Warrant

- A. Review of Complaint.

1. The Prosecutor will review all complaints filed to determine if sufficient merit exists to submit the complaint to a Judge for appropriate action.
2. If sufficient merit appears to exist from examination of the complaint and complainant, the Prosecutor will sign the complaint, and submit it to a Judge with recommendations for a summons or warrant. If sufficient merit is not apparent, the complaint will be brought to the attention of the Reservation police with suggestions for investigation, if any. Complainants should be notified of actions taken, where possible.
3. When a complaint is submitted for the review of a Judge, a summons or arrest warrant must be issued unless a Judge feels probable cause does not exist for such action. If a summons or warrant is not issued, the complaint must be returned immediately to the prosecutor for further investigation.

B. Summons

1. The Judge may issue a summons when in his discretion arrest does not appear necessary. The summons must name the defendant, the offense charged, and order the defendant to appear before a Judge within five (5) days. The summons must also inform the defendant a warrant of arrest will be issued if he fails to appear within five (5) days.
2. Service of Summons. The summons, along with a copy of the complaint, must be served by an authorized law officer. Service will be valid if the papers are delivered within the Court's jurisdiction to the defendant personally. Once served, the officer must note the date, time and place of service on a copy of the summons, which will be filed with the records of the case.

C. Arrest With a Warrant

1. Issuance. Where the Judge finds that arrest is essential, or a summons cannot be served, he may issue a warrant for arrest of the defendant named in the complaint. The warrant must name the defendant, or contain a description by which the defendant can be identified with reasonable certainty, state the offense charged, and be signed by the Judge.
2. Use of Arrest Warrant. A Reservation law enforcement officer must use the warrant to take the defendant into custody. The officer must have the warrant in his possession at the time of arrest. Arrests can be made, as long as the defendant is informed of the charge(s) against him, and as soon as possible receives a copy of the warrant.

3. Jurisdiction Limits. A warrant for arrest will be valid only within the jurisdiction of the Court, unless it is used in conformance with the extradition procedures set forth in this Code.
4. Time of Arrest. If the offense charged is a Class A or B offense, the arrest may be made at any time of the day or night; if it is a Class C offense, the arrest pursuant to a warrant cannot be made between the hours of 9:00 p.m. and 8:00 a.m. unless such is specifically authorized by the issuing Judge.

Rule 4: Extradition

- A. A warrant of arrest issued by any other jurisdiction for any person found within the exterior boundaries of the Northern Cheyenne Reservation must be presented to a Northern Cheyenne Court Trial Judge prior to the person being taken into custody.
- B. If the Judge, after reviewing the date, charge and identity of the person named is satisfied as to the warrant's validity, then he must also issue an arrest warrant. The person named will then be taken into custody by the Northern Cheyenne law enforcement officials with the assistance of the other authorities involved, if requested, and held at Northern Cheyenne jail pending a removal hearing.
- C. As soon as possible, a removal hearing will be held. If the Judge determines that the person in custody and before the Court is the same person charged in the warrant and that there is probable cause that such person committed the offense charged in the warrant, a removal order will be issued and the person promptly turned over to the custody of the appropriate authorities.
- D. The person arrested may execute a waiver of removal hearing after being informed of all his rights, including a right to such hearing. If the waiver is executed, the person will be promptly turned over to the custody of the appropriate authorities.
- E. Extradition by the Northern Cheyenne Tribe is allowable to the United States and any other jurisdiction that reciprocates extradition by the Northern Cheyenne Tribe. State and County governments must provide written proof evidencing reciprocal extradition with the Tribe before the Northern Cheyenne Tribal Court grants extradition.

Rule 5: Arrest Without a Warrant

- A. Authority to Arrest Without a Warrant. A Reservation Police officer may arrest someone without a warrant or knowledge of an outstanding complaint, if the officer has reasonable cause to believe that such person has committed:
 1. A Class A or B offense; or
 2. A Class C offense, and the officer has witnessed the offense, or has reasonable cause to believe that such person:

- a. Will not be apprehend unless immediately arrested; or
 - b. May cause injury to himself or others or damage property unless immediately arrested.
- B. Reasonable Cause. Reasonable cause exists where the officer has a substantial objective basis for believing that the person to be arrested has committed a crime. In determining whether reasonable cause exists to justify an arrest without a warrant, an officer may take into account all information which a prudent officer would judge relevant to the likelihood that a crime has been committed and that the person to be arrested has committed it.
- C. Citation Procedure. The police department and Judges of the Northern Cheyenne Reservation have the authority to develop and implement a citation procedure where arrests made by police officers for some crimes can be processed to conclusion with citations only.

Rule 6: Arrest Procedures

- A. When arresting or attempting to arrest an individual, all Reservation Police officers must:
1. Inform the person that he is under arrest;
 2. Identify himself as a Reservation Police officer;
 3. Where possible, inform the person of the reason(s) for the arrest;
 4. Where possible, show the warrant for arrest if such exists; and
 5. Inform the arrested person of his right to remain silent, his right to have counsel present during questioning, and that anything he says could be used against him at trial.
- B. When arresting or attempting to arrest an individual, all Reservation police officers may:
1. Use reasonable force and use all necessary means to effect the arrest of a person who either flees or forcibly resists after being informed of the officer's identify and his intent to arrest.
 2. Search the person along with areas within his immediate reach, removing and putting into evidence all contraband or weapon discovered.
 3. When in fresh pursuit, continue in such fresh pursuit and arrest upon apprehension of the person pursued, even if apprehension occurs outside the territorial boundaries of the Northern Cheyenne Reservation. All persons so arrested may be returned to the Northern Cheyenne Reservation by the arresting officer if the arrest occurs in the State of Montana. Otherwise, the arrested person will be turned over to local police officials pending extradition proceedings.

Rule 7: Search and Seizure, Warrant

- A. Authority. A search warrant authorized under this Rule may be issued by a Judge on request of a Reservation police officer, or the Prosecutor.
- B. Issuance and Contents
1. Requests for a search warrant must be accompanied by a signed, notarized affidavit(s) or an oral statement made under oath from someone, to be transcribed and signed by the maker, setting forth information showing that probable cause exists to believe that either:
 - a. a named individual, or particularly described person has stolen property, or is in possession of property which constitutes evidence of the commission of a crime; and/or
 - b. the property of the particular described location and premises is where the named individual or particularly described person located; and/or
 - c. the property of the particular described location and premises is where stolen property is located, or is the location where property which constitutes evidence of the commission of a crime exists.
 2. If the Judge believes probable cause exists to issue a warrant, he must sign the warrant, describing the person and/or place to be searched, and describing with particularity the property to be seized. The Chief Trial Judge will designate one Trial Judge to be contacted for search warrants when the Court is not in session.
 3. Service and Return
 1. A search warrant, once issued must be served by Reservation police officers between the hours of 7:00 a.m. and 11:00 p.m. unless specific reasonable circumstances exist to serve it at other hours, and such circumstances are stated in the warrant. All search warrants will be void forty-eight (48) hours after issuance, unless specific reasons are present and stated in the warrant to extend this time period. In no situation will the warrant be good after ten (10) days.
 2. The officer taking property under a warrant must give the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or must leave the copy and receipt at the place from which the property was taken. All property seized must be taken to the Reservation police station, inventoried and listed on a copy of the search warrant. The officer seizing the property must file a report with the Court describing the property, and the events surrounding the seizure.

Rule 8: Search and Seizure

- A. No law enforcement officer will search or seize any property without a warrant nor shall any property seized be admitted into evidence unless:
1. The officer has probable cause to believe that the person in possession of such property is engaged in the commission of an offense;
 2. The search is incidental to a lawful arrest, is reasonably related to the offense for which the person is taken into custody, and is limited to the person or areas within his immediate reach; or
 3. The officer has probable cause to believe that the person has in his possession contraband or fruits of the crime, and taking the time to get a search warrant would endanger the officer's life, or seriously risk the destruction of the evidence.

Rule 9: Arraignment

- A. Appearance Before the Court. Every person arrested and in custody must be arraigned at the next regularly scheduled session of the Court, or within seventy-two (72) hours, whichever occurs first. All others will appear before the Court as arranged. The Court may, in its discretion, provide for temporary commitment of persons who, for reasons beyond their control, are unable to appear in Court at the scheduled session or within the seventy-two (72) hours period.
- B. Procedure at Arraignment. Arraignments must be conducted in open Court, and will include:
1. Reading the complaint to the accused, and providing him with a copy of the complaint if he has not received one.
 2. Explaining to the defendant the substance of the charges and the language of the law establishing the offense and fixing the penalty.
 3. Non-Indians. Unless the Tribe is authorized to assert jurisdiction over a non-Indian under federal law, the Court must explain his right to assert a lack of personal jurisdiction of the Court over the defendant in a criminal action,. If the defendant affirmatively elects to waive personal jurisdiction, the action will proceed as if the defendant were an Indian. If the non-Indian defendant does not affirmatively waive the lack of personal jurisdiction, the action will become a civil action to exclude the defendant from the Reservation. The Prosecutor must prosecute such civil action in the name of the Northern Cheyenne Tribe and the action will be conducted pursuant to sections 4-2-1 and 4-2-8 of Title IV. The defendant may assert or waive lack of jurisdiction at any time prior to the start of trial.

4. Advising the defendant of his right to counsel at his expense, and the right to have counsel present before entering a plea or making any statement.
5. Asking the defendant to plead guilty or not guilty to the charges.
6. If the defendant pleads guilty, the Judge must address the defendant personally as set forth in Rule 11, to determine if the plea is made voluntarily and with understanding. If satisfied with the defendant's responses, the Judge may then sentence the defendant. In the Court's discretion, a future date may be set for sentencing. The defendant will be eligible for bail if a future date is set for sentencing, or if no bail, he will be credited for time served until sentencing, when sentenced.
7. If the defendant requests counsel, arraignment will be postponed until he has had time to confer with counsel. Postponement shall not exceed one working day.
8. If the defendant is silent, the Court will enter a plea of not guilty for him.

Rule 10:

Commitment

- A. No person will be detained or jailed under this Law and Order Code for a longer period than seventy-two (72) hours unless there has been issued a commitment order bearing the signature of a Judge of the Northern Cheyenne Reservation Court.
- B. Pending investigation of charges or pending trial, a temporary commitment order must be issued.
- C. A final commitment order must be issued for persons jailed as a result of a sentence of the Northern Cheyenne Reservation Court.

Rule 11:

Pleas

- A. Alternatives. A defendant may plead guilty or not guilty. If the defendant is silent, the Court must enter a plea of not guilty on behalf of the defendant.
- B. Insuring Guilty Plea Voluntary
 1. The Judge cannot accept a plea of guilty without first talking to the defendant personally in open Court to determine that the plea is voluntary and is not the result of force or threats or of promises, apart from any plea arrangements which may have been entered into between the Tribal prosecutor and the defendant. The Judge must explain and determine that the defendant understands the following:
 - a. The nature of the charges to which the plea is offered and the possible penalty should he plead guilty;

- b. That the defendant has a right to be represented at his own expense;
 - c. That he has a right to have a jury trial if he could potentially be imprisoned;
 - d. That he has a right to compel witnesses to testify, to be confronted by the witnesses against him, and to cross-examine witnesses against him;
 - e. That he has a right to testify or to not testify since he has a right not to be compelled to incriminate himself; and
 - f. That if he pleads guilty, there will not be a trial; and in effect, he has waived his right to a trial, and further that any statement he makes either to the Judge or anyone else concerning the offense charged, can be used against him in that proceeding or in any future prosecution.
 - g. That if he pleads guilty, the court has a duty to impose a sentence consistent with the Northern Cheyenne Law and Order Code sentencing guidelines.
2. If a defendant pleads guilty and the Judge considers the plea to be made involuntarily and/or without full understanding of the charge, the Judge must reject the plea of guilty, and enter a plea of not guilty for the defendant.
 3. Plea Agreement Procedure
 - a. The Prosecutor and counsel for defendant or the defendant may engage in discussions in an attempt to reach an agreement that, upon entering a plea of guilty to a charged offense or to a lesser or related offense, or to assisting in the apprehension of other criminals, the Prosecutor may do any of the following:
 - (1) Move for dismissal of other charges or all charges;
 - (2) Make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that such recommendation or request is not be binding on the Judge; or
 - (3) Agree that a specific sentence is the appropriate disposition of the case.
 - b. The Judge cannot participate in any discussions, but if a plea or agreement has been reached, the Judge will require the record to reflect the terms of the agreement in open Court through an oral disclosure, on a showing of good cause, in chambers at the time the plea is offered. The Court may accept or reject the agreement or may defer a decision as to the acceptance or

rejection until there has been an opportunity to consider a presentence report if any is to be made.

- c. Acceptance of a Plea Agreement. If the Judge accepts the plea agreement, the Judge must inform the defendant that the Judge will embody in the judgment and sentence the disposition provided for in the plea agreement.
 - d. Rejection of a Plea Agreement. If the Judge rejects the plea agreement, the Judge must, on the record, inform the defendant and the Prosecutor of this fact, advise the defendant personally in open Court or on showing of good cause, in chambers, that the court is not bound by the plea agreement, afford the defendant an opportunity to then withdraw his plea and advise the defendant that if he persists in his guilty plea the disposition of the case may be less favorable to the defendant than contemplated by the plea agreement.
 - e. Time of Plea Agreement Procedure. Except for good cause shown, the Judge must be notified of the plea agreement at the time of arraignment or as soon thereafter as possible, but in all cases prior to trial.
 - f. Inadmissibility of Pleas, Offers of Plea and Related Statements. Any evidence of a plea of guilty, later withdrawn, or of statements made in connection therewith, is not admissible in any other criminal proceeding or in any civil case against the defendant who made the plea or offer. However, evidence of a statement made in connection with or relevant to a plea of guilty, later withdrawn, or a plea of no contest to the offense charged or any other offense is admissible in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath and on the record, and in the presence of an advocate.
4. Determining Accuracy of Plea. The Judge will not enter a judgment on a tendered plea of guilty without first making an inquiry to satisfy himself that there is a factual basis for the plea.

Rule 12:

Bail; Release from Custody

- A. Right to Bail. Except as provided, all persons arrested for offenses under this Law and Order Code and incarcerated must be given the opportunity to make bail and be released pending their trial or appeal.
- B. Bail Without Judge. A bail schedule for Class B and C offenses will be adopted by the Court and a defendant may obtain release from jail at any time prior to arraignment by posting the amount or amounts of bail specified in the bail schedule for the offense or offenses charged; provided, however, that if the arresting officer or complaining witness will certify to the jailer, or if the jailer will certify based on his own

observations, that the defendant is at the time he is brought to the jail unconscious or in an intoxicated or apparently intoxicated condition, or for any reason does not appear to be in a conscious and sober condition, such defendant will not be allowed to post bail according to the bail schedule for eight (8) hours. The defendant must be informed by the jailer of his right to make bail at the appropriate time.

- C. Bail With Judge. At the arraignment or other appropriate time, the Judge must set bail at an amount, not to exceed twice the maximum fine payable for the offense charged, which will tend to assure the appearance of the defendant at trial or at such time as his appearance is necessary. A defendant may at arraignment request that any bail posted under the bail schedule be reduced or that he be released as under (D) below.
- D. Release Without Bail. The Judge may at his discretion release the defendant on his own recognizance, if it appears substantially certain, considering all relevant factors, that the defendant will appear at the appointed time.
- E. Form of Bail. The required bail may be tendered in the form of cash, or a bail bond executed by two or more reliable persons as sureties subject to the jurisdiction of the Court in the form which the Court may by rule direct.
- F. Forfeit of Bond. In the event the defendant fails to appear as required, the Court will forfeit any cash deposited or order the sureties of the bail bond to pay the designated amount to the Court. The liability of the sureties may be enforced by order of the Court without the necessity of an independent action or judgment.
- G. Discretion of Court. The Court may order the forfeiture of bail for non-appearance set aside if it appears that justice does not require the enforcement of the forfeiture.
- H. Denial of Bail. The Court may deny release on bail pending trial or appeal when a Class A offense is charged and it appears reasonably certain that the defendant will pose a serious threat to the safety and well being of the Reservation and its residents if released.
- I. Time for Release on Bail. The right to be released on bail as provided will not accrue until charges under this Law and order Code have been filed. Persons incarcerated in the Reservation jail for violation of federal or state laws will be subject to be released on bail by the jurisdiction under whose authority the released on bail by the jurisdiction under whose authority the arrest was made according to the provisions of the laws under which their arrest was made. A person arrested for violation of federal law will not be entitled to be released on bail until the prosecution of such charges has been declined by the United States Attorney, plus a reasonable time

thereafter, not to exceed thirty-six (36) hours after the receipt of notification of such declination, in which charges for violation of this Law and Order Code, if any, may.

- J. After conviction at trial, and with an appeal pending, bail may be continued or allowed by the Judge to run until the final determination of the case.

Rule 13: Joinder of Offenses and Defendants

A. Joinder of Offenses

- 1. Two or more offenses may be charged in the same complaint and tried together if:
 - a. The offenses charged are the same;
 - b. Different offenses are charged, but they arise out of the same act or transaction; or
 - c. All of the offenses charged are connected in a common scheme or plan.

B. Joinder of Defendants

- 1. Two or more defendants may be charged in the same complaint and tried together if they are alleged to have participated in the same act or transaction constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of such defendants need not be charged on each count.
- 2. Two or more defendants can be tried together by separate complaint if the defendants were involved in the same series of acts or transactions that constitute the offense(s) charged.

- C. Severance of Trials. If it appears that a defendant is prejudiced by a joinder of offenses or other defendants for trial together, the Court may order separate complaints and may order separate trials or provide such other relief as justice requires. In ruling on a motion for severance, the Court may order the Prosecutor to deliver to the Court for inspection in chambers, any statements made by a defendant which the Prosecutor intends to introduce in evidence at trial.

Rule 14: Discovery

- A. The police or Prosecutor must, upon request, permit the defendant or his attorney to inspect and copy any statements or confessions, or copies thereof, made by the defendant if such are within the possession or control by the police or prosecution. The police and prosecution must make available copies of reports of physical, mental or scientific tests of examinations relating to or done on the defendant.

B. Notice of Alibi Defense

The defendant or his attorney must reveal by written notice to the Court at least five (5) working days before trial the names of any witnesses upon whom the defense intends to rely to provide an alibi defense for the defendant. Failure to provide such notice will prevent the use of such witnesses by the defense unless it can be shown by the defense that prior notice was impossible or that prejudice to the prosecution has resulted, in which case the Judge may order the trial delayed or make such other orders as tend to assure a just determination of the case.

Rule 15:

Motions and Hearings

- A. Motions Defined. An application to the Court for an order must be by motion.

A motion other than one made at trial or hearing must be in writing unless the Court permits it to be made orally. It must state the grounds upon which it is made and must set forth the relief or order sought. It may be supported by affidavit and/or a memorandum of points and authorities.

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

1. Any defenses or objections which are capable of determination other than at trial may be raised before trial by motion.
2. Defenses and objection based on defects in the institution of the prosecution of the complaint other than that it fails to show jurisdiction in the Court or fails to charge an offense may be raised on motion only before trial or such may be deemed waived, unless the court for good cause shown grants relief from such waiver. Lack of jurisdiction or failure to charge an offense may be raised as defenses or noticed by the Court on its own motion at any stage of the proceeding.
3. Such motions must be made in writing and filed with the Court at least five (5) business days before the day set for trial. Such motions will be argued before the date of trial unless the Court directs otherwise. Decision on such motions shall be made by the Judge and not by the jury.
4. If a motion is decided against a defendant, the trial will proceed as if no motion were made. If a motion is decided in favor of a defendant, the Judge must alter the proceedings or enter judgment as is appropriate in light of the decision.

- C. Preliminary Hearings

If pre-trial motions are filed in any criminal proceedings, the Court must hold a preliminary hearing for argument on such motions. All pre-trial motions must be heard not more than ten (10) days after all motions and responses are filed.

Rule 16: Trial by Jury

- A. Right. Nothing in these Rules of Procedure will be construed to obstruct or deny the right of a defendant subject to imprisonment to have a trial by jury.
- B. Jury Request. Unless a trial by jury is specifically requested by a defendant, all criminal actions shall be tried by the Court.
- C. Procedure. If a defendant in a criminal proceeding desires to be tried by a jury, he must either request a jury trial at his arraignment, or file a written request for a trial by jury at least ten (10) days prior to trial.

Rule 17: Dismissal

- A. The prosecutor may dismiss a case in the absence of probable cause after a complaint has been initiated.
- B. If there is an unreasonable and unnecessary delay in bringing a defendant to trial the Court may, on motion of the defendant or its own motion, dismiss the complaint.

Rule 18: Service and Filing of Papers

- A. Written motions, written notices and similar papers must be served on each party in the manner provided for in civil actions.
- B. All papers required to be served must also be filed with the Court.

Rule 19: Subpoena

- A. A subpoena is an order of Court issued by the Clerk of the Court. It must contain the name of the Court, the title of the case, and command each person to whom it is directed to attend and give testimony or produce for use at trial evidence, at the time and place specified therein. The Clerk may issue subpoenas upon the request of the prosecutor or the defendant.
- B. A subpoena may be served by any police officer or court employee or any person over the age of eighteen (18) years who is not a party. Service may be accomplished by handing a copy of the subpoena to the person named therein. No fees or mileage allowance need be tendered with service. The individual serving the subpoena must file a return of service notice with the Clerk of the Court on which is noted the date, time and place of service as well as the name of the person performing such service.
- C. A subpoena may be served any place within the territorial jurisdiction of the Norther Cheyenne Reservation Court.
- D. Failure, without adequate excuse, to obey a properly served subpoena may be deemed a contempt of Court and prosecution thereof may proceed upon the order of the Court. No contempt will be prosecuted unless a return of service notice has been filed with the Court Clerk per subsection (B) of this Rule, as proof of service.

Rule 20: Assignment of Cases for Trial

- A. The Chief Trial Judge and Court Clerk must place criminal proceedings on the Court calendar with as little delay as is reasonably possible.
- B. The Northern Cheyenne Court must schedule criminal trials no less frequently than eleven (11) days per month.
- C. The Court may find for good cause shown by either party direct that a trial be postponed to the next or some succeeding month. However, if the prosecution, for good cause shown, requests and is granted a delay, and if the defendant is incarcerated not having made bail, the defendant may be released on his own recognizance pending the rescheduled trial.

Rule 21: Pre-Trial Conference

- A. Purpose. A pre-trial conference must 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.
- B. Who Attends. The defendant or his counsel, if he has one, and the Prosecutor 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 purpose stated above.
- C. Conduct of Conferences. 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; and
 - 6. Remaining issues to be resolved at trial.

This Order will supersede pleadings for the purpose of framing issues for trial.

III. TRIAL

Rule 22: Rights of Defendant in Criminal Cases

- A. In all criminal prosecutions, the defendant will have the following rights:
1. The right to be present throughout the proceeding and to defend himself in person, by lay counsel or professional attorney at his own expense;
 2. The right to know the nature and cause of the charge and to receive a copy of the complaint;
 3. The right to meet the witnesses against him face to face;
 4. The right to compulsory process to obtain the testimony of witnesses and physical evidence in his behalf;
 5. The right to a speedy public trial and by an impartial jury if a prison sentence is possible under this code upon conviction; and
 6. The right not to testify. The failure of the defendant to testify will not be construed against him or be commented upon by the prosecution.

Rule 23: Jury Trials

- A. A defendant may request a trial by jury per Rule 16 in all cases where he faces potential imprisonment, except in a contempt proceeding.
- B. Rule 22 on jurors in the Rules of Civil Procedure is incorporated by reference.

Rule 24: Trial By Judge

In cases tried without a jury, the Judge must make a general finding of guilt or innocence and must make specific findings in the form of a written decision.

Rule 25: Affidavit of Bias and Prejudice of a Judge; Judge Disability

- A. Affidavits
Upon the filing of an affidavit of bias and prejudice setting forth satisfactory proof of facts establishing that, by reasons of bias or prejudice of the Judge to whom the case is assigned, the defendant cannot have a fair trial, the Judge must disqualify himself. Any person who abuses this privilege, by filing affidavits of bias and prejudice without basis in fact, will be in contempt of Court.

Rule 26: Proceedings at Trial

- A. Complaint
The Clerk must read the complaint and state the defendant's plea.

- B. Motions. The Court must accept any pretrial motions for ruling by the Court. All arguments must be made outside the hearing of the jury in a trial by jury.
- C. Opening Statements. The opening statements will be made by the prosecutor followed by the defendant or his lay counsel or professional attorney. The prosecutor may waive an opening statement and the defendant may waive an opening statement or reserve the right to make an opening statement after the prosecution has rested its case.
- D. Evidence. Evidence will be presented in support of the charge, and the defendant, lay counsel or professional attorney will have the right to cross-examine any witnesses called by the prosecution.
- E. Testimony. The testimony of witnesses will be taken orally in open Court, but upon motion of the prosecutor, the defense witnesses may be sequestered or excluded until called upon to testify. Testimony can also be given as evidence by properly executed affidavits, depositions or written interrogatories. Physical evidence will be introduced and admitted only after a proper foundation has been laid as to its relevancy.
- F. Motion For Judgment of Acquittal. The defendant may make a motion for judgment of not guilty or directed verdict in acquittal at the close of the evidence offered by the prosecution. If the evidence is not sufficient to support a conviction of the offense charged (beyond a reasonable doubt), the Court must order the entry of judgment of (not guilty or a directed verdict of) acquittal of the offense charged.
- G. Court's Motion for Acquittal. The Court may also enter judgment of not guilty on its own motion after the evidence on either side is closed, and must do so if the evidence is not sufficient to support a conviction of the offense charged beyond a reasonable doubt.
- H. Defense. After the prosecution has rested its case, the defense must have the burden to proceed with the defense and evidence in support thereof, and the prosecution shall have the right to cross-examine any witnesses called by the defense.
- I. Rebuttal Testimony. The parties may then offer rebutting testimony only on matters relating to direct testimony, except that the Court may, in the interest of justice, permit the introduction of newly discovered evidence.
- J. Closing Arguments. The prosecution and the defense may present final arguments in the case. The prosecution will have the right to open or close, but not both.
- K. Instructions
 - 1. At the close of the evidence or at an earlier time during the trial as the Court reasonably directs, any party may file written requests

that the Court instruct the jury on the law as set forth in the request. At the same time, copies of such requests must be furnished to adverse parties. The Court will inform counsel of its proposed action upon the requests prior to the arguments of counsel to the jury, but the Court will instruct the jury after the arguments are completed. No party may assign as error any portion of the instructions or omission therefrom unless he objects before the jury retires to consider its verdict, stating specifically the matter to which he objects and the grounds of the objection. Opportunity will be given to make the objection out of the hearing or, if necessary, out of the presence of the jury.

2. In every criminal case, the Judge must instruct the jury that the defendant is presumed to be innocent, that the burden of proof rests on the prosecution, that the evidence must show beyond a reasonable doubt that the defendant has committed the crime charged, and that if the defendant did not testify, his silence will not be considered as evidence that he is guilty.

Rule 27: Rules of Evidence. The admissibility of evidence and the competence and privileges of witnesses will be governed by the Northern Cheyenne Rules of Evidence.

Rule 28: Expert Witnesses and Interpreters

- A. Either party may call expert witnesses of his own selection and each bears the cost of such.
- B. The Court may appoint an interpreter of its own selection and each party may provide his own interpreters. An interpreter through whom testimony is received from a defendant or witness or communicated to a defendant or other witness shall be put under oath to faithfully and accurately translate and communicate as required by the Court.
- C. The trial Judge or Clerk may act as interpreter with the consent of all parties.

Rule 29: Verdict

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

- A. Verdict by Judge. The Judge must render a verdict of guilty if he believes the defendant to be guilty beyond a reasonable doubt. If some doubt remains, a verdict of not guilty must be entered. The Judge will have the option of rendering a verdict immediately after closing arguments or taking the case under advisement and ruling on it at a later time.
- B. Verdict by Jury. A guilty verdict must be returned in a jury trial only when a majority of the jury finds that the defendant is guilty beyond a reasonable doubt.

- C. Mistrial. If after repeated efforts, a jury is unable to reach a verdict, the Judge shall dismiss the jury and declare a mistrial. If a mistrial is entered, the defendant may be brought up on the same charge(s) again.
- D. Several Defendants. If there are two or more defendants, the Judge or jury may at any time in his/its deliberations, return a verdict or verdicts with respect to a defendant or defendants as to whom he or it has decided. If the jury cannot agree with respect to each defendant, the defendant or defendants as to whom it cannot agree may be tried again, as after a mistrial.
- E. Lesser Included Offense. The Judge or jury may find the defendant(s) guilty of a lesser included offense instead of the offense he is formally charged with. The lesser included offense does not have to be formally charged, as long as it is proven with the same proof used to show the charged offense.
- F. Verdict of Not Guilty. If a verdict of not guilty is rendered, judgment must be entered into the record immediately and the defendant must be immediately released from custody.
- G. Verdict of Guilty. If a verdict of guilty is rendered, the Judge will so advise the defendant in open Court, either sentence the defendant or set a date for sentencing, and enter a judgment of guilty in the Court's records.

Rule 30: Motions of Trial. Either party may make motions throughout the course of the trial, all of which shall be oral unless otherwise directed by the Judge. Both parties will have the opportunity to state their respective positions on any motion made. The motions which can be made shall include but are not limited to the following:

- A. Motion for Exclusion of Witnesses. A motion to exclude all witnesses who have not yet testified may be made by either party or done by the Court on its own initiative prior to the time any witness has testified to ensure that the testimony of the witness is his own independent recollection of the facts and that he does not adopt the testimony of a prior witness. It will be within the discretion of the Court to grant or deny a motion to exclude witnesses made by either party.
- B. Motion to Exclude Evidence. A motion to exclude evidence may be made during the course of a trial when an opposing party introduces evidence that is inadmissible under these rules.
- C. Motion for Judicial Notice. Either party may, during the presentation of its case, move the Court to take judicial notice of matters which by their nature are not properly the subject of testimony or which are universally regarded as established by common notoriety. Granting or denying the motion will be within the discretion of the Court.
- D. Motion for Mistrial. A motion for mistrial can be made at any time during the trial and can be granted in the Court's discretion. A party may make a motion for a mistrial when any action by any person has

the effect of prejudicing the outcome of the trial to the point that such prejudice could only be overcome by holding a new trial.

- E. Motion for a New Trial. The defendant may make a motion for a new trial after a verdict of guilty has been rendered against him. The motion must specifically allege the errors made by the Court during the trial which form the basis for the motion. The motion will be granted or denied as justice dictates.
- F. Motion for a Directed Verdict
 - 1. At the close of the prosecution's case, the defense may move that the Court direct a verdict of not guilty. Defendant's motion must be granted only if the prosecution has failed to present a prima facie case.
 - 2. Either party may make a motion for a directed verdict at the close of the defendant's case. A directed verdict of not guilty can be made when the prosecution failed to present a prima facie case and a directed verdict of guilty can be made if the Court finds as a matter of law that no adequate defense was presented.

IV. POST-TRIAL

Rule 31: Judgments

A judgment of guilty must set forth the plea, the verdict or findings, the adjudication, and sentence when imposed. If the defendant(s) is found not guilty or for any other reason is entitled to be discharged, judgment must be entered immediately, and the defendant(s) released. All judgments must be signed by the presiding Judge and entered into the record by the Court Clerk.

Rule 32: Sentencing

- A. Sentence must be imposed without unreasonable delay as provided in this Law and Order Code. Pending sentence, the Court may commit the defendant(s) to jail or continue or alter bail. Before imposing sentence, the Judge must afford counsel an opportunity to speak on behalf of the defendant and must ask the defendant if he wishes to speak on his own behalf to present any information which might lessen his punishment.
- B. A motion to withdraw a plea of guilty may be made only before the defendant(s) is sentenced. However, to correct manifest injustice, the Judge may set aside the judgment of guilty and permit the defendant(s) to withdraw his plea.

Rule 33: Kinds of Punishment

- A. All persons convicted of any offense may be sentenced to imprisonment, fine, work, or a combination of these punishments. However, no section of this Code will prohibit the Judge from imposing any sentence deemed more appropriate than imprisonment,

finer, or work, under the circumstances of a particular case. Sentences may include, but are not limited to: Commitment to a rehabilitation or alcoholism program; work for the benefit of the Northern Cheyenne reservation or restitution.

- B. Non-Indians who are found guilty of an offense and who did not waive lack of personal jurisdiction in a criminal action will be excluded from the Northern Cheyenne Reservation for a period not to exceed three times the length of time for which such person could be incarcerated for the offense, if found guilty of a Class B offense. If found guilty of a Class A offense the non-Indian may be excluded from the Northern Cheyenne Reservation for a period not to exceed one hundred (100) years.

Rule 34: Payment of Fines

Fines must be paid in cash, or similar currency. When in the Judge's discretion the defendant has demonstrated an inability to pay a fine immediately, but appears to have the resources to pay over a period of time, the Judge may allow the fine to be paid in monthly installments, for a period not to exceed 24 months from judgment.

The methods available for collecting a civil judgment may be available to collect any unpaid money upon order of the Court following a failure to make any required payment.

If fined and unable to pay the fine, the person fined has the option to serve the fine at a rate of \$20.00 per day if served in jail or \$40.00 per day of work, when the work will be Court authorized and police department assigned, on a work-program projects that involve cleaning or building up the Northern Cheyenne Reservation.

Rule 35: Restitution

- A. In addition to any other punishment, the Judge may require an offender who has inflicted injury upon the person or property of any individual or entity to make restitution or to compensate the party injured, through the surrender of property, the payment of money damages, or the performance of any other act for the benefit of the injured party, within reason.

- B. To require restitution and to fix the amount of all damages, the Court will begin with a presumption that the defendant is responsible for all damages since he was convicted of the offense causing such damages. The Court will hold a hearing to receive evidence as to the amount of the damages incurred, and to receive the defendant's rebutting evidence, if any. If the injured party desired, restitution from the defendant will be rendered to the Court, and then given to the injured party, to avoid contact between the two parties

Rule 36: Factors in Determining Punishments

In determining the amount and duration of the punishment to be imposed, the Judge will consider:

- A. Punishments under western court types for similar offenses, as established by expert testimony introduced pursuant to the North Cheyenne Rules of Evidence;
- B. The sentences fixed in this Code for Class B and C offenses are maximum sentences, to be imposed only in extreme circumstances;
- C. Whether the offense(s) was malicious or willful;
- D. Whether the convicted person has made restitution, paid damages, or shown a willingness to make amends;
- E. The previous record and conduct of the convicted person; and
- F. The financial resources and needs of the convicted person and his dependents, and such other factors allowable at law, as the Judge finds appropriate to consider.

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

Rule 37: New Trial

Any person convicted three (3) times for the same offense in one (1) year, or five (5) times for any Class A or Class B offense in one (1) year, will be considered a habitual offender. The judgment against such person will designate him a habitual offender, punishment received shall be the maximum allowable under the offense unless good cause is shown for leniency, and the offender will not be eligible for suspension of sentence, probation, parole or commutation of sentence.

Rule 38: New Trial

The Court, on motion of a defendant, may grant a new trial to him if required in the interest of justice. If trial was by the Court without jury, the Court, on motion of a defendant for a new trial, may vacate the judgment, if entered, take additional testimony, and direct the entry of a new judgment. A motion for a new trial based on the ground of newly discovered evidence may be made only within one (1) month after final judgment, but if an appeal is pending, the Court may grant the motion only on remand of the case. A motion for a new trial based on any other grounds may be made within seven (7) days after verdict or finding of guilty or within such further time as the Court may fix during the seven-day period.

Rule 39: Suspension of Sentences — Probation

- A. Where sentence has been imposed upon any person who has not previously been convicted of any felony, nor classified as a habitual offender, the Judge may, in his discretion, suspend the sentence imposed and allow the offender his freedom on probation upon his signing a pledge of good conduct during the period of the sentence and upon the terms of probation outlined by the Court. No suspension of restitution ordered will be allowed.

- B. Condition of Probation. The commission of any offense set forth in this Law and Order Code will be a violation of probation. In addition, a presiding Judge may require a person on probation to meet such terms and conditions as are just and appropriate, taking into consideration the prior criminal record of the defendant, his background, character, financial condition, family obligations, and any other pertinent circumstances.
- C. Violation of Condition of Probation. Any person who violates his probation pledge will be required to serve the original sentence plus an additional one-half of such original sentence, as punishment for the offense of violation of the probation. Violations of conditions of probation will be brought before a Judge in open Court at a formal hearing, to decide if a violation took place, and the results thereof.

Rule 40: Deferred Sentences

- A. Where a sentence has been imposed, the Judge may, in his discretion, defer the imposition of the sentence and impose any reasonable restrictions or conditions during the period of deferred imposition. The restrictions or conditions include but are not limited to those listed in Rule 33 of this Code.
- B. The Judge may, in his discretion, revoke the suspension after giving the offender a hearing prior to the revocation.
- C. Where the Court has deferred the imposition of a sentence and the time period of the deferment has expired, upon motion of the Court, the defendant or the defendant's representative, the Court may allow the defendant to withdraw his plea of guilty or may strike the guilty verdict from the record and order that the charge(s) be dismissed.

Rule 41: Parole. Any person, not designated a habitual offender, sentenced by a Judge, who has without misconduct served one-half the sentence imposed by such Judge, will be eligible for parole.

- A. Anyone desiring parole, may apply to any Judge. Such Judge will review the circumstances of the potential parolee, and determine whether he has served one-half of his sentence, is not guilty of any misconduct, and is not a habitual offender. If all requirements are not met, the prisoner may be released on parole for the remainder of his sentence, subject only to the terms and conditions he has, in writing, agreed to comply with.
- B. Violations. Any parolee who violates any provision of his parole may be apprehended and confined to serve the remainder of the original sentence without diminishment for time the person was free on parole.

Rule 42: Commutation of Sentence. If a presiding Judge is satisfied that justice will best be served by reducing a sentence, the Judge may at any time reduce any

sentence imposed upon a person, upon a showing of proof that during the period of the sentence the person served without misconduct and did satisfactory work.

Rule 43: Appeal

A. Notice to Defendant

After imposing sentence in a case which has gone to trial on a plea of not guilty, the Judge must advise the defendant of his right to appeal.

B. The defendant has the right to appeal from the following:

1. A final judgment of conviction;
2. From an order made, after judgment, affecting his substantial rights.

C. The prosecution has the right to appeal from the following:

1. A judgment of dismissal in favor of the defendant upon motion to dismiss based on any procedural irregularity occurring before trial;
2. An order arresting judgment or acquitting the defendant contrary to the verdict of the jury or before such verdict can be rendered;
3. An order of the Court directing the jury to find for the defendant;
4. An order made after judgment affecting the substantial rights of the prosecution.

Rule 44: Stay of Judgment and Relief Pending Review

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

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

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

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

V. GENERAL PROVISIONS

Rule 45: Medical Examinations and Care

A. At the discretion of a Judge, any person whom the Judge believes to be in need of the care of a medical and/or psychiatric facility, may be referred to such facility for care and treatment.

- B. At the recommendation of any qualified physician of the United States Public Health Service, the Judge may order any person to submit to appropriate medical and/or psychiatric treatment.
- C. In the event neither the Tribe, Reservation, nor the Federal Government has appropriate facilities for treatment.

Rule 46: Criminal Contempt

- A. 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 any Court of the Northern Cheyenne Court that interrupts proceedings or impairs respect of the Court's authority.
 - 2. Breach of peace, noise, or other disturbance interrupting proceedings in such Court.
 - 3. Willful disobedience or resistance to any process of or order issued by such Court.
 - 4. Acting as an officer, spokesman or other official of such Court without authority.
 - 5. Publication of false or grossly inaccurate report of Court proceedings.
 - 6. Requesting a jury trial and failing to appear on the date the jury trial is scheduled.
 - 7. Any other interference with the process, proceeding, or dignity of such Court or judge of such Court while performing official duties.

B. Procedures in Contempt

- 1. A direct contempt is one committed in the presence of such Court or so near as to be disruptive of Court proceedings and may be summarily adjudged and punished.
- 2. Any other contempt will be determined at a hearing by the Trial 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 may issue any order necessary to allow the person to purge himself of contempt and may impose a sentence of five (5) days imprisonment and a fine of up to \$500.00, plus costs, as determined by the Court.

Rule 47: Clerical Mistakes

Clerical mistakes in judgments, orders, or other parts of the record and errors in the record arising from oversight or omission may be

corrected by the Court at any time and after such notice, if any, as the Court orders.

Rule 48: Construing Rules of Criminal Procedure

These rules will be construed together to reach a fair conclusion in all cases. However, if one or more specific sections are found to be invalid for any reason, the remaining rules will still have the full force of law.

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