

Title IX

TITLE IX

HEIRSHIP AND PROBATE CODE

TABLE OF CONTENTS

I. GENERAL SECTION

9-1-1	Adoption of Heirship and Probate Code
9-1-2	Purposes -- Liberal Construction
9-1-3	Jurisdiction
9-1-4	General Definitions
9-1-5	Petition for Testacy Proceeding
9-1-6	Public Notice of Hearing
9-1-7	Service of Notice on Interested Parties
9-1-8	Proof of Service of Notice of Hearing
9-1-9	Waiver of Notice
9-1-10	When Orders or Notice Binding One Binds Another -- Representation
9-1-11	Effect of Divorce, Annulment, or Separation Decree
9-1-12	Homicide -- Effect on Interests Succession, Wills, Joint Assets, Life Insurance and Beneficiary Designations
9-1-13	Duty and Liability of Will Custodian
9-1-14	Grounds of Will Contest -- Hearing
9-1-15	Testacy Hearing
9-1-16	Exemptions
9-1-17	Rights of Adopted Child

II. INTESTATE SECTION

9-2-1	Intestate Estate
9-2-2	Succession Without Probate
9-2-3	Who May Initiate Probate Proceedings
9-2-4	Priority of Settlement
9-2-5	Order of Succession
9-2-6	Intentions of Decedent

III. PROBATE

9-3-1	Who May Make a Will
9-3-2	Written Instruments -- Wills
9-3-3	Execution of a Will -- Validity
9-3-4	Holograph Will

- 9-3-5 Self-Proved Will
- 9-3-6 Who May Witness — Effect of Witness by Beneficiary
- 9-3-7 Incorporation by Reference
- 9-3-8 Separate Writing Identifying Disposition of Tangible Personal Property
- 9-3-9 Revocation by Writing or Act
- 9-3-10 Omitted Spouse
- 9-3-11 Pretermitted Child

IV. APPOINTMENT OF PERSONAL REPRESENTATIVE, SPECIAL ADMINISTRATOR — DUTIES

- 9-4-1 Appointments
- 9-4-2 Special Administrator
- 9-4-3 Qualification of Special Administrator
- 9-4-4 Purpose of Appointing Special Administrator
- 9-4-5 Personal Representative
- 9-4-6 Qualifications of Personal Representative
- 9-4-7 Purpose of Personal Representative
- 9-4-8 Petition for Appointment of Special Administrator, Personal Representative
- 9-4-9 Priorities in Appointment of Special Administrator, Personal Representative
- 9-4-10 Duties of Special Administrator, Personal Representative
- 9-4-11 Distribution, Settlement, Discharge
- 9-4-12 Mismanagement — Limitations on Actions
- 9-4-13 Compensation

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TITLE IX
HEIRSHIP AND PROBATE CODE

I. GENERAL SECTION

9-1-1. Adoption of Heirship and Probate Code.

This Code shall be known as the Northern Cheyenne Heirship and Probate Code. This Code shall supercede any contradictory sections or ordinances.

9-1-2. Purposes - Liberal Construction.

- A. This Code shall be liberally construed and applied to promote its underlying purposes and policies.
- B. The underlying purposes and policies of this Code are to:
 - 1. Discover and make effective the intent of a decedent in distribution of his property;
 - 2. Promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to his successors;
 - 3. Facilitate the power of the Northern Cheyenne Tribal Reservation to prescribe the manner of descent and distribution of the property of its members.

9-1-3. Jurisdiction.

The Northern Cheyenne Tribal Reservation has the inherent power to prescribe the manner of descent and distribution of the property of its members. The Court shall have jurisdiction over personal property of any person who is a resident and dies on the Reservation. The Court shall have the power to appoint conservators and representatives for minors and incompetents, determine the validity of wills, and to probate estates and wills.

9-1-4. General Definitions.

Subject to additional definitions contained in subsequent sections which are applicable to specific sections, the following definitions apply:

- A. Application - a written request for an order of appointment.
- B. Child - includes any individual entitled to take as a child under this code by intestate succession from the parent whose relationship is involved.

- C. Claims - in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes, demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.
- D. Conservator - means a person who is appointed by a court to manage the estate of a protected person.
- E. Devise - when used as a noun means a testamentary disposition of real or personal property and when used as a verb means to dispose of real or personal property by will.
- F. Devisee - means any person designated in a will to receive a devise.
- G. Disability - cause for a protective order or appointment of a conservator when:
1. A minor owns money or property that requires management or protection which cannot otherwise be provided, has or may have business affairs which may be jeopardized or prevented by his minority, or when funds are needed for his support and education and that protection is necessary or desirable to obtain or provide funds; or
 2. A person is unable to manage his property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, confinement, incarceration, detention by a foreign power, or disappearance.
- H. Distributee - any person who has received property of a decedent from his personal representative other than as a creditor or purchaser.
- I. Estate - includes the property of the decedent, or other person whose affairs are subject to the code.
- J. Fiduciary - includes personal representative, guardian, and conservator.
- K. Formal Proceedings - means those conducted before a judge with notice to interested persons.
- L. Guardian - a person who has qualified as a guardian of a minor

or incapacitated person pursuant to testamentary or court appointment. This term does not include a person who is merely a guardian ad litem.

- M. Heirs - those persons, including the surviving spouse, who are entitled under intestate succession to the property of a decedent.
- N. Incapacitated Person - any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person or which cause has so impaired the person's judgment that he is incapable of realizing and making a rational decision with respect to his need for treatment.
- O. Interested Person - includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined by the particular purpose of and matter involved in any proceeding.
- P. Intestate Estate - any part of the estate of a decedent not effectively disposed of by his will passes to his heirs as prescribed by this code so long as that part of the estate is non-trust and non-restricted real property, or personal property of a tribal member.
- Q. Issue - of a person means all his lineal descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in this code.
- R. Minor - a person who is under eighteen (18) years of age.
- S. Mortgage - any conveyance, agreement, or arrangement in which property is used as security.
- T. Parent - includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this code by intestate succession from the child whose relationship is in question.
- U. Personal Representative - includes executor, administrator, successor, personal representative, and persons who perform

substantially the same function under the law governing their status.

- V. Petition - a written request to the court for an order after notice.
- W. Property - non-trust and non-restricted real property and personal property or any interest therein.
- X. Protected Person - a minor or other person for whom a conservator has been appointed or other protective order has been made.
- Y. Protective Proceedings - a proceeding to determine that a person cannot effectively manage or apply his estate to necessary ends, either because he lacks the ability or is otherwise incompetent or because he is a minor, and to secure administration of his estate by a conservator or other appropriate relief.
- AA. Testacy Proceedings - a proceeding to establish a will or determine intestacy.
- BB. Ward - a person for whom a guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority.
- CC. Will - includes codicil and any testamentary instrument which merely appoints an executor or revokes or revises another will.

9-1-5 Petition for Testacy Proceeding [As amended by Ord. DOI 3(98)]

When any member of the tribe dies leaving property subject to the jurisdiction of the Northern Cheyenne Court, any person claiming to be an heir or devisee of the decedent, or the tribe itself, may file a petition in the Trial Court (hereinafter "Court") for the purposes of:

- A. Invoking testacy proceedings to determine intestacy of the decedent's estate, or to establish the validity of the decedent's will; and
- B. Commencement of all necessary determinations resulting in the settlement of the decedent's estate, including petitions and appointment of special administrator, guardians, or personal representative.

9-1-6 Public Notice of Hearing [As amended by Ord. DOI 3(98)]

Within ten (10) working days after the Petition for Testacy proceedings is filed, the Court Clerk shall give notice of the date, time, and place of the hearing, and the business to be conducted in accordance with the Northern Cheyenne Civil Procedure Code.

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9-1-7. Service of Notice on Interested Parties.

A copy of the notice of Hearing shall be served at least ten (10) days before the date of hearing on each known claimant, presumptive heir, and other interested parties in the manner provided for in the Northern Cheyenne Civil Procedure Code.

9-1-8. Proof of Service of Notice of Hearing.

Proof of service required in Section 9-1-7 shall be filed by the Clerk of Court. Proof of service shall comply with the requirements set forth in the Northern Cheyenne Civil Procedure Code.

9-1-9. Waiver of Notice.

A person, including a guardian, conservator, or other fiduciary, may waive notice by a writing signed by him, or his attorney, and filed with the Clerk of Court.

9-1-10. When Orders or Notice Binding One Binds Another-Representation.

- A. In formal proceedings involving estates of decedents, minors, protected persons, incapacitated persons, unborn or unascertained persons are bound by orders of the Court so long as notice is properly given to:
1. Personal representative;
 2. A person with identical interests;
 3. A parent of a minor; or
 4. Guardian or other representative of a ward.
- B. Subsection (A) applies only to the extent that there is no conflict of interest between the person receiving orders or notice and the person bound by the order or notice.

9-1-11. Effect of Divorce, Annulment, or Separation Decree.

- A. A person who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless by virtue of a subsequent marriage he is married to the decedent at the time of death. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section.
- B. The following persons are estopped from claiming a marriage to a decedent:

1. A person who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is recognized as valid, unless they subsequently participate in a marriage ceremony purporting to marry each to the other or subsequently live together as man and wife;
2. A person who, following a decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third person; or
3. A person who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.

9-1-12. Homicide - Effect on Intestate Succession, Wills, Joint Assets, Life Insurance, and Beneficiary Designations.

- A. A surviving spouse, heir, devisee, or creditor who purposely and knowingly kills the decedent is not entitled to any benefits under the will or under this chapter, and the estate of the decedent passes as if the killer had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of the killer passes as if the killer had predeceased the decedent.
- B. Any joint tenant who feloniously and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as his property and the killer has no rights by survivorship. This provision applies to joint tenancies in real and personal property, joint accounts in banks, savings and loan associations, credit unions, and other institutions, and any other form of co-ownership with survivorship incidents.
- C. A named beneficiary of a bond, life insurance policy, or other contractual arrangement who feloniously and intentionally kills the principal obligee or the person upon whose life the policy is issued is not entitled to any benefit under the bond, policy, or other contractual arrangement, and it becomes payable as though the killer had predeceased the decedent.
- D. Any other acquisition of property or interest by the killer shall be treated in accordance with the principles of this section.
- E. A final judgment of conviction of felonious and intentional killing is conclusive for purposes of this section. In the absence of a conviction of felonious and intentional killing, the court may determine by a preponderance of evidence whether the killing was felonious and intentional for purposes of this section.

- F. This section does not affect the rights of any person who, before rights under this section have been adjudicated, purchases from the killer for value and without notice property which the killer would have acquired except for this section, but the killer is liable for the amount of the proceeds or the value of the property. Any insurance company, bank, or other obligor making payment according to the terms of its policy or obligation is not liable by reason of this section unless prior to payment it has received at its home office or principal address written notice of a claim under this section.

9-1-13. Duty and Liability of Will Custodian.

Every custodian of a will must deliver the will to the Tribal Court or to a personal representative named in the will within twenty (20) days after receipt of information that the maker of the will has died. Any such custodian who fails to do so may be liable for monetary damages sustained by a person injured as a result of such failure.

9-1-14. Grounds of Will Contest - Hearing.

- A. If anyone appears to contest the will, he must file written grounds or opposition to the probate and serve a copy on the individual petitioning for the probate and other interested parties within thirty (30) days after the admission of the will to probate. Issues which may be considered by the Court are:
1. The competency of the decedent to make the will;
 2. Whether the will resulted from duress, menace, fraud, or undue influence;
 3. Whether the will is legal in form and properly executed; and
 4. Any questions substantially affecting the validity of the will.
- B. A hearing shall be held to resolve a will contest. If the Court decides the will is invalid, the probate will be voided at that time and the personal representative will be relieved of his duties. The personal representative shall not be liable for any act done in good faith previous to such voiding.

9-1-15. Testacy Hearing.

- A. The Court shall determine the validity or invalidity of any purported will(s), and whether or not the decedent's estate or any part of the decedent's estate is an intestate estate.
- B. Based upon this determination, the Court may also make the following appointments so long as all notice requirements are

met indicating such appointments would be considered:

1. Receive petition and/or upon the Court's own motion, appoint a special administrator;
 2. Receive petition(s) for appointment of a personal representative to probate a valid will, or administer an interstate estate and make an appointment; and
 3. Appoint guardian to represent the interest of a minor, incapacitated, or disabled person who has an interest in the estate.
- C. The Court may elect to set a date for another hearing to make any necessary appointments, including those set out in subsection (B).

9-1-16. Exemptions

- A. Certain property shall be exempt from claims of all interested parties including creditors. Exempt property shall be:
1. The dwelling of the decedent valued up to \$5,000.00; and
 2. Articles protected under the Historical Protection ordinance at the time of death of the decedent.
- B. Nothing in this exemption shall be interpreted to affect the claims of secured creditors.

9-1-17 Rights of Adopted Child

Except as otherwise provided in a decree of adoption, a tribal member adopted by someone not a tribal member, retains all inheritance rights derived from his biological parents.

II. INTESTATE SUCCESSION

9-2-1. Intestate Estate.

Any part of the estate of decedent not effectively disposed of by his will passes as prescribed in the following sections.

9-2-2. Succession Without Probate.

Absent creditor claims, real property or contested cases, the title of the decedent's property shall automatically vest in the person who has possession.

9-2-3. Who May Initiate Probate Proceedings.

Any person claiming interest in the decedent's property may file a

petition in the court for the purpose of settling the decedent's estate. Persons claiming interest include creditors and persons not in possession of claimed property.

9-2-4. Priority of Settlement.

In settling the decedent's estate, the court shall first pay creditor claims subject to the exempt property provisions.

9-2-5. Order of Succession.

The court will determine, using the intentions of the decedent as the guide, what portion of decedent's estate each claimant, other than a creditor, should have. The court will also consider the needs of those dependent upon the decedent. The court may refer to Montana Code Annotated 72-2-201 through 72-2-212 for guidance.

9-2-6. Intentions of Decedent.

The intentions of the decedent will be determined from testimony of people who knew the decedent.

III. PROBATE

9-3-1. Who May Make a Will.

Any person eighteen (18) or more years of age who is of sound mind may make a will.

9-3-2. Written Instruments - Wills.

- A. When any member of the Northern Cheyenne Tribe dies leaving a will disposing of property, other than allotment or other trust property subject to the jurisdiction of the United States, the Northern Cheyenne Court shall:
 - 1. Give notice and full opportunity to appear in court to all interested parties at a hearing petitioned under 9-1-5;
 - 2. Determine the validity or invalidity of the will;
 - 3. Resolve which will is controlling when more than one will is presented for probate and a conflict results.
- B. If the Court finds there is a valid will, distribution of the decedent's property shall comply with the terms of the will under the Probate Section of this Code.
- C. If the Court finds the will invalid, determination of heirs and distribution will proceed under the Intestate Succession Section of this Code.

9-3-3. Execution of a Will - Validity.

Except as provided for holographic wills, and writings within 9-3-4, every will shall be in writing signed by the testator or in the testator's name by some other person in the testator's presence and by his direction and shall be signed by at least two persons each of whom witnessed either the signing or the testator's acknowledgement of the signature of the will.

9-3-4. Holograph Will.

- A. A will which does not comply with 9-3-3 is valid as a holographic will, whether or not witnessed, if the signature and material provisions are in the handwriting of the testator.
- B. A holographic will may be valid even if immaterial parts or introductory wording are printed, typed, or stamped so long as the printed, typed or stamped portion could be deleted and the handwritten portion would still evidence the testator's intent in devising his property.

9-3-5. Self-Proved Will.

- A. Any will may be simultaneously executed, attested, and made self-proved by acknowledgement thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under this Code and evidenced by the officer's certificate, under official seal, in substantially the following form:

I, _____, the testator, sign my name to this instrument this _____ day of _____, 19____, being first duly sworn, and do hereby declare to the undersigned authority that I sign and execute as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence.

Testator

We, _____, _____, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signed and executes this instrument as his last will and that he signs it willingly (or willingly directs another to sign for him), and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and that to the best of our

knowledge the testator is 18 years of age or older, of sound mind, and under no constraint or undue influence.

Witness

Witness

NORTHERN CHEYENNE INDIAN RESERVATION

Subscribed, sworn to, and acknowledged before me by _____, the testator, and subscribed and sworn to before me by _____ and _____, witnesses, this _____ day of _____, 19____.

(Signed) _____

(Title)

- B. An attested will may at any time subsequent to its execution be made self-proved by the acknowledgement thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under this Code where the acknowledgement occurs and is evidenced by the officer's certificate, under the official seal, attached or annexed to the will in substantially the following form:

NORTHERN CHEYENNE INDIAN RESERVATION

We, _____, _____, and _____, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as his last will and that he signed willingly or directed another to sign for him and that he executed it as his free and voluntary act for the purposes therein expressed and that each of the witnesses, in the presence and hearing of the testator, signed the will as witnesses and that to the best of his knowledge the testator was at that time 18 or more years of age, of sound mind, and under no constraint or undue influence.

Testator

Witness

Witness

Subscribed, sworn to, and acknowledged before me by _____, the testator, and subscribed and sworn to before me by _____ and _____, witnesses this _____ day of _____, 19____.

(SEAL) (Signed) _____ (Title)

9-3-6. Who May Witness - Effect of Witness by Beneficiary.

- A. Any person generally competent to be a witness may act as a witness to a will.
- B. A will is not invalid because the will is signed by an interested witness.
- C. All beneficial devises made in any will to a subscribing witness thereto are void unless there are two other competent subscribing witnesses to the same, but a mere claim on the estate of the testator does not prevent his creditors from being competent witnesses to his will.
- D. If a witness to whom any beneficial devise void under Subsection (C) is made would have been entitled to any share of the estate of the testator if the testator had died intestate, such witness succeeds to so much of the share as would be distributed to him under intestate succession, not exceeding the devise or bequest made to him in the will.

9-3-7. Incorporation by Reference.

Any writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

9-3-8. Separate Writing Identifying Disposition of Tangible Personal Property.

- A. Whether or not the provisions relating to holographic wills apply, a will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money, evidences of indebtedness, documents of title, and securities and property used in trade or business.
- B. To be admissible under this section as evidence of the intended disposition, the writing must either be in the handwriting of the testator or be signed by him and must describe the items and the devisees with reasonable certainty.
- C. The writing may be:

1. Referred to as one to be in existence at the time of the testator's death;
2. Prepared before or after the execution of the will;
3. Altered by the testator after its preparation; or
4. A writing which has no significance apart from its effect upon the dispositions made by the will.

9-3-9. Revocation by Writing or Act.

A will or any part thereof is revoked:

- A. By a subsequent will which revokes the prior will or part expressly or by inconsistency; or
- B. By being burned, torn, canceled, obliterated, or destroyed with the intent and for the purpose of revoking it by the testator or by another person in his presence and by his direction.

9-3-10. Omitted Spouse.

If a testator fails to provide by will for his surviving spouse who married the testator after the execution of the will, the omitted spouse shall receive the same share of the estate he would have received if the decedent left no will unless it appears from the will that the omission was intentional or the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

9-3-11. Pretermitted Child.

- A. If a testator fails to provide in his will for any of his children born or adopted after the execution of his will, the omitted child receives a share in the estate equal in value to that which he would have received if the testator had died intestate unless:
 1. It appears from the will that the omission was intentional;
 2. When the will was executed the testator had one or more children and devised substantially all his estate to the other parent of the omitted child, or
 3. The testator provided for the child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

- B. If at the time of execution of the will the testator fails to provide in his will for a living child solely because he believes the child to be dead, the child receives a share in the estate equal in value to that which he would have received if the testator had died intestate.

IV. APPOINTMENT OF PERSONAL REPRESENTATIVE, SPECIAL ADMINISTRATOR - DUTIES

9-4-1. Appointments.

- A. Upon notice of a decedent's death whose estate will be settled under the jurisdiction of the Northern Cheyenne Court, the Court may, upon petition or by its own motion, appoint a Special Administrator who shall serve until a Personal Representative is appointed. If a Personal Representative is not petitioned for and appointed, the Special Administrator may be named as a Personal Representative until the decedent's estate is settled.
- B. A Personal Representative may be petitioned for when the decedent died leaving a valid will, or when an intestate estate is involved.

9-4-2. Special Administrator.

When any member of the Northern Cheyenne Tribe or any other person domiciled on the Northern Cheyenne Reservation dies, owning at the time of his death property other than allotment or other trust property subject to the jurisdiction of the United States, the Court may, on its own motion, at the request of any member of the Northern Cheyenne Tribe named in the decedent's will, or any other interested party, appoint a Special Administrator.

9-4-3. Qualification of Special Administrator.

The Special Administrator shall be any legally competent adult tribal member.

9-4-4. Purpose of Appointing Special Administrator.

The purpose of appointing a temporary Special Administrator is to take charge of the decedent's estate immediately so that the property will not be lost, wasted or depreciated in value.

9-4-5. Personal Representative.

When any resident of the Northern Cheyenne Reservation dies leaving a valid will, or an intestate estate, with or without naming a personal representative, and owning at the time of death property other than allotment or other trust property subject to the jurisdiction of the United

States, the Court shall, at the request of any member of the Northern Cheyenne Tribe, or any other interested party, appoint a Personal Representative.

9-4-6. Qualifications of Personal Representative.

The Personal Representative shall be a legally competent adult.

9-4-7. Purpose of Personal Representative.

The purpose of appointing a Personal Representative is to have one person with the responsibility and authority to settle the decedent's estate in accord with the decedent's will and/or applicable provisions of this Code.

9-4-8. Petition for Appointment of Special Administrator, Personal Representative.

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- A. A petition for appointment of a Special Administrator must be writing, signed by the applicant, state facts essential to give jurisdiction of the case, and when known to the applicant, the names, ages, and addresses of the heirs of the decedent and the names and addresses of other interested parties, and filed with the Clerk of Court.
 - B. In addition to the requirements of subsection (A), an applicant for Personal Representative shall also state his knowledge or belief that the decedent died intestate or left a valid will, give the reasons for his knowledge or belief, and state which priority categories under 9-4-9 he asserts as authorizing his appointment.

9-4-9. Priorities in Appointment of Special Administrator, Personal Representative.

- A. Special Administrator. Priority shall be given by the Court to a tribal member who is not related to the decedent, and is not an heir or named beneficiary of the decedent.
- B. Personal Representative. Priorities in the Court's appointment of a qualified Personal Representative are:
 - I. The person named in the decedent's will as Personal Representative unless:
 - a. Another person petitions the Court showing the named Personal Representative is incompetent or otherwise disabled; or
 - b. The named Personal Representative refused to undertake the duties of Personal Representative in settlement of the decedent's estate.

2. If under subsection (B) a named Personal Representative is not available the priorities of appointment are:

a. The surviving spouse or his designee;

b. A lineal descendant;

c. A parent;

d. A collateral descendant;

e. A creditor in respect to property in the decedent's estate which is under the jurisdiction of the Tribal Court; or

f. Others.

9-4-10. Duties of Special Administrator, Personal Representative.

A. The duties of Special Administrator and Personal Representative are:

1. Inventory and Appraisal:

a. Within thirty (30) days of appointment, make and return upon oath to the Court, a complete inventory of all of the property of the estate under the jurisdiction of the Court, including any claims against the property, and an appraisal of the value of each item listed in the inventory.

b. The Special Administrator or Personal Representative may request the Court to appoint an appraiser.

c. If, after the filing of the inventory and appraisal, any property is found which was not included in the previous inventory and appraisal, the property shall be appraised and added to the inventory and appraisal required under subsection (A)(1) within ten (10) days of its discovery.

2. A Special Administrator, after an inventory and appraisal is completed, and accepted by the Court, shall deliver any property of the estate in his possession and a copy of the inventory and appraisal accepted by the Court to a Court-Appointed Personal Representative. Except, in the event that the Court reappoints the temporary Special Administrator as a Personal Representative, he shall fulfill the duties of that office until discharged by the Court in the manner provided for in this Code.

B. Duties of Personal Representative:

1. Receive any property and/or inventory and appraisal of the estate from a Special Administrator and issue him a receipt.

2. Bond: The Court may appoint without a bond, but may later require the Administrator or Representative to file a bond in the amount deemed reasonable in relation to the assets of the estate. When such a bond is required, it shall be obtained through a surety company, or two reliable members of the tribe who reside within the boundaries of the Northern Cheyenne Reservation, who execute an agreement in writing which is approved and accepted by the Court and filed with the Clerk of Court.

3. Notice to Creditors: Immediately after appointment, the appointee shall cause to be posted in public places in three (3) communities on the Northern Cheyenne Reservation, and published in the tribal newspaper, or if there is none, in a newspaper of general circulation on or adjacent to the Northern Cheyenne Reservation, a notice that he has been appointed as the Special Administrator or Personal Representative in either an intestate or probate proceeding. Such notice shall require all creditors and all persons having claims against the deceased or the estate to serve such claims upon the person giving notice and to also file them with the Clerk of Court within sixty (60) days from the publishing of the notice. The notice shall be posted for a period of four (4) consecutive weeks, such posting and publishing to be concurrent. A copy of the notice posted and proof of publication shall be filed with the Clerk of Court.

4. Notice of Acceptance or Rejection of Claim:

a. The appointee shall examine each claim filed and notify the claimant in writing whether he will recommend its acceptance or rejection within thirty (30) days of the expiration of the period for filing of claims against the estate. If the claim is rejected or not approved within thirty (30) days after the expiration of the period for filing claims, the claimant may begin legal action to establish his claims. Such action must be commenced within thirty (30) days of notice of rejection or within sixty (60) days after filing the claim.

b. All claims shall be preferred in the following order:

(1) Expenses of administration;

(2) Expenses of last illness and burial;

(3) Any amount due the Northern Cheyenne Tribe;

(4) All other claims.

The appointee shall file copies of the notices of rejection or acceptance of claims with the Clerk of Court.

5. **Petition for Determination of Takers and Distribution of Estate:** As soon as reasonably possible after the inventory, appraisal, and acceptance or rejection of claims are computed, the appointee shall petition the Court for the determination of takers and distribution of the estate. This petition shall include the names of all claimants entitled to payment, the names of claimants whose claims were rejected, the names of each heir or devisee and, a statement of their share of the estate, and such other information as may be necessary to assist the Court in the distribution of the estate.

6. **Final Report:** Within thirty (30) days after the Court's determination of takers and distribution of the estate, the appointee shall file his report with the Court showing he has fully discharged his duties and shall file receipts or other proof of delivery of all property of the decedent and the making of all payments ordered by the Court. This report constitutes the appointee's request for discharge upon settlement of the estate.

7. **Other Duties Assigned by the Court:** At the time of appointment of a Special Administrator or Personal Representative, the Court may assign duties in addition to those listed in this Code. Such additional duties shall be reasonable in light of the complexity of the particular estate before the Court. The additional duties and the reason(s) for the assignment of additional duties will be noted in the Court's Order of Appointment.

9-4-11. Distribution, Settlement, Discharge.

Upon receipt of the Special Administrator's or Personal Representative's final report and the Court's finding that all duties have been faithfully completed, the Court shall enter an order closing the estate and discharging the Special Administrator or Personal Representative.

9-4-12. Mismanagement - Limitations on Actions.

A. A Special Administrator or Personal Representative and the surety on his bond may be liable to any person who suffers

monetary loss or damage as a result of mismanagement of the estate.

B. An action under Subsection (A) must be commenced within two (2) years from the date of the final order closing the estate.

9-4-13. Compensation.

A Special Administrator, Personal Representative, or Appraiser may be compensated from the assets and income of the estate in an amount determined by the Court as being fair and reasonable taking into consideration the complexities of the settlement of the estate and the value of the estate.

AMERICAN BAR ASSOCIATION

CODE OF JUDICIAL CONDUCT*

CANON 1

A Judge Should Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

CANON 2

A Judge Should Avoid Impropriety and the Appearance of Impropriety in All His Activities

- A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- B. A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness.

Commentary

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. He must expect to be the subject of constant public scrutiny. He must therefore accept restrictions on his conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The testimony of a judge as a character witness injects the prestige of his office into the proceeding in which he testifies and may be misunderstood to be an official testimonial. This Canon, however, does not afford him a privilege against testifying in response to an official summons.

It is inappropriate for a judge to hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, or national origin. Membership of a judge in an organization that practices invidious discrimination may give rise to perceptions by minorities, women, and others, that the judge's impartiality is impaired. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined by a mere examination of an organization's current membership rolls but rather depends upon the history of the organization's selection of members and other relevant factors. Ultimately, each judge must determine in the judge's own conscience whether an organization of which the judge is a member practices invidious discrimination.¹

*The Code of Judicial Conduct was adopted by the House of Delegates of the American Bar Association on August 16, 1972. ©Copyright 1972, American Bar Association. Reprinted with permission.

¹ This paragraph was added on August 7, 1984, by the American Bar Association House of Delegates meeting in Chicago.

CANON 3

**A Judge Should Perform the Duties
of His Office Impartially and
Diligently**

The judicial duties of a judge take precedence over all his other activities. His judicial duties include all the duties of his office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

- (1) A judge should be faithful to the law and maintain professional competence in it. He should be unwayed by partisan interests, public clamor, or fear of criticism.
- (2) A judge should maintain order and decorum in proceedings before him.
- (3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.

Commentary

The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Courts can be efficient and businesslike while being patient and deliberate.

- (4) A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider *ex parte* or other communications concerning a pending or impending proceeding. A judge, however, may obtain the advice of a disinterested expert on the law applicable to a pro-

ceeding before him if he gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

Commentary

The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted. It does not preclude a judge from consulting with other judges, or with court personnel whose function is to aid the judge in carrying out his adjudicative responsibilities.

An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite him to file a brief *amicus curiae*.

- (5) A judge should dispose promptly of the business of the court.

Commentary

Prompt disposition of the court's business requires a judge to devote adequate time to his duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with him to that end.

- (6) A judge should abstain from public comment about a pending or impending proceeding in any court, and should require similar abstention on the part of court personnel subject to his direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

Commentary

"Court personnel" does not include the lawyers in a proceeding before a judge. The

CODE OF JUDICIAL CONDUCT

conduct of lawyers is governed by DR7-107 of the *Code of Professional Responsibility*.

- (7) A judge should prohibit broadcasting, televising, recording or photographing in courtrooms and areas immediately adjacent thereto during sessions of court, or recesses between sessions, except that under rules prescribed by a supervising appellate court or other appropriate authority, a judge may authorize broadcasting, televising, recording and photographing of judicial proceedings in courtrooms and areas immediately adjacent thereto consistent with the right of the parties to a fair trial and subject to express conditions, limitations, and guidelines which allow such coverage in a manner that will be unobtrusive, will not distract the trial participants, and will not otherwise interfere with the administration of justice.²

B. Administrative Responsibilities.

- (1) A judge should diligently discharge his administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.
- (2) A judge should require his staff and court officers, subject to his direction and control to observe the standards of fidelity and diligence that apply to him.
- (3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

Commentary

Disciplinary measures may include reporting a lawyer's misconduct to an appropriate disciplinary body.

- (4) A judge should not make unnecessary appointments. He should exercise his power of appointment only on the basis of merit, avoiding nepotism and favoritism. He should not approve compensation of appointees beyond the fair value of services rendered.

Commentary

Appointees of the judge include officials such as referees, commissioners, special masters, receivers, guardians and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by this subsection.

C. Disqualification.

- (1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where:
- (a) he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
- (b) he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

² As amended August 11, 1992 American Bar Association House of Delegates, Best Practices per Report 107.

Commentary

A lawyer in a governmental agency does not necessarily have an association with other lawyers employed by that agency within the meaning of this subsection; a judge formerly employed by a governmental agency, however, should disqualify himself in a proceeding if his impartiality might reasonably be questioned because of such association.

- (c) he knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;
- (d) he or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
 - (i) is a party to the proceeding, or an officer, director, or trustee of a party;
 - (ii) is acting as a lawyer in the proceeding;

Commentary

The fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that "his impartiality might reasonably be questioned" under Canon 3C(1), or that the lawyer relative is known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Canon 3C(1)(d)(iii) may require his disqualification.

- (iii) is known by the judge to have an interest that could be substantially affected by the

outcome of the proceeding;

- (iv) is to the judge's knowledge likely to be a material witness in the proceeding;
- (2) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.
- (3) For the purposes of this section:
 - (a) the degree of relationship is calculated according to the civil law system;

Commentary

According to the civil law system, the third degree of relationship test would, for example, disqualify the judge if his or his spouse's father, grandfather, uncle, brother, or niece's husband were a party or lawyer in the proceeding, but would not disqualify if a cousin were a party or lawyer proceeding.

- (b) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;
- (c) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:
 - (i) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

CODE OF JUDICIAL CONDUCT

- (ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

- (iii) the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

- (iv) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

D. **Remittal of Disqualification.** A judge disqualified by the terms of Canon 3C(1)(c) or Canon 3C(1)(d) may, instead of withdrawing from the proceeding, disclose on the record the basis of his disqualification. If, based on such disclosure, the parties and lawyers, independently of the judge's participation, all agree in writing that the judge's relationship is immaterial or that his financial interest is insubstantial, the judge is no longer disqualified and may participate in the proceeding. The agreement, signed by all parties and lawyers, shall be incorporated in the record of the proceeding.

Commentary

This procedure is designed to minimize the chance that a party or lawyer will feel

coerced into an agreement. When a party is not immediately available, the judge without violating this section may proceed on the written assurance of the lawyer that his party's consent will be subsequently filed.

CANON 4

A Judge May Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice

A judge, subject to the proper performance of his judicial duties, may engage in the following quasi-judicial activities, if in doing so he does not cast doubt on his capacity to decide impartially any issue that may come before him:

- A. He may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.
- B. He may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and he may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.
- C. He may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. He may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. He may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

Commentary

As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of

the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that his time permits, he is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law.

Extra-judicial activities are governed by Canon 5.

CANON 5

A Judge Should Regulate His Extra-Judicial Activities to Minimize the Risk of Conflict with His Judicial Duties

- A. **Avocational Activities.** A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of his office or interfere with the performance of his judicial duties.

Commentary

Complete separation of a judge from extra-judicial activities is neither possible nor wise; he should not become isolated from the society in which he lives.

- B. **Civic and Charitable Activities.** A judge may participate in civic and charitable activities that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

- (1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before him or will be regularly engaged

in adversary proceedings in any court.

Commentary

The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which he is affiliated to determine if it is proper for him to continue his relationship with it. For example, in many jurisdictions charitable hospitals are now more frequently in court than in the past. Similarly, the boards of some legal aid organizations now make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

- (2) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of his office for that purpose, but he may be listed as an officer, director, or trustee of such an organization. He should not be a speaker or the guest of honor at an organization's fund raising events, but he may attend such events.
- (3) A judge should not give investment advice to such an organization, but he may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

Commentary

A judge's participation in an organization devoted to quasi-judicial activities is governed by Canon 4.

- C. **Financial Activities.**

- (1) A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, exploit his judicial position, or involve him in frequent transactions with law-

ner as he reports compensation in Canon 6C.

Commentary

This subsection does not apply to contributions to a judge's campaign for judicial office, a matter governed by Canon 7.

(3) For the purposes of this section "member of his family residing in his household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of his family, who resides in his household.

(5) A judge is not required by this Code to disclose his income, debts, or investments, except as provided in this Canon and Canons 3 and 6.

Commentary

Canon 3 requires a judge to disqualify himself in any proceeding in which he has a financial interest, however small; Canon 5 requires a judge to refrain from engaging in business and from financial activities that might interfere with the impartial performance of his judicial duties; Canon 6 requires him to report all compensation he receives for activities outside his judicial office. A judge has the rights of an ordinary citizen, including the right to privacy of his financial affairs, except to the extent that limitations thereon are required to safeguard the proper performance of his duties. Owning and receiving income from investments do not as such affect the performance of a judge's duties.

(7) Information acquired by a judge in his judicial capacity should not be used or disclosed by him in financial dealings or for any other purpose not related to his judicial duties.

D. **Fiduciary Activities.** A judge should not serve as the executor, administrator, trustee, guardian, or other fiduciary, except for the estate, trust, or person of a member of his family, and then only if such service will not interfere with the proper performance

of his judicial duties. "Member of his family" includes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. As a family fiduciary a judge is subject to the following restrictions:

(1) He should not serve if it is likely that as a fiduciary he will be engaged in proceedings that would ordinarily come before him, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which he serves or one under its appellate jurisdiction.

Commentary

The Effective Date of Compliance provision of this Code qualifies this subsection with regard to a judge who is an executor, administrator, trustee, or other fiduciary at the time this Code becomes effective.

(2) While acting as a fiduciary a judge is subject to the same restrictions on financial activities that apply to him in his personal capacity.

Commentary

A judge's obligation under this Canon and his obligation as a fiduciary may come into conflict. For example, a judge should resign as trustee if it would result in detriment to the trust to divest it of holdings whose retention would place the judge in violation of Canon 5C(3).

- E. **Arbitration.** A judge should not act as an arbitrator or mediator.
- F. **Practice of Law.** A judge should not practice law.
- G. **Extra-judicial Appointments.** A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his country.

CODE OF JUDICIAL CONDUCT

state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

Commentary

Valuable services have been rendered in the past to the states and the nation by judges appointed by the executive to undertake important extra-judicial assignments. The appropriateness of conferring these assignments on judges must be reassessed, however, in light of the demands on judicial manpower created by today's crowded dockets and the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial. Judges should not be expected or permitted to accept governmental appointments that could interfere with the effectiveness and independence of the judiciary.

CANON 6

A Judge Should Regularly File Reports of Compensation Received for Quasi-Judicial and Extra-Judicial Activities

A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in his judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

- A. **Compensation.** Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.
- B. **Expense Reimbursement.** Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his spouse. Any payment in excess of such an amount is compensation.
- C. **Public Reports.** A judge should report the date, place, and nature of any activity for which he received

compensation, and the name of the payor and the amount of compensation so received. Compensation or income of a spouse attributed to the judge by operation of a community property law is not extra-judicial compensation to the judge. His report should be made at least annually and should be filed as a public document in the office of the clerk of the court on which he serves or other office designated by rule of court.

CANON 7

A Judge Should Refrain from Political Activity Inappropriate to His Judicial Office

A. Political Conduct in General

- (1) A judge or a candidate for election to judicial office should not:
 - (a) act as a leader or hold any office in a political organization;
 - (b) make speeches for a political organization or candidate or publicly endorse a candidate for public office;

Commentary

A candidate does not publicly endorse another candidate for public office by having his name on the same ticket.

- (c) solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions, except as authorized in subsection A(2);
- (2) A judge holding an office filled by public election between competing candidates, or a candidate for such office, may, only insofar as permitted by law, attend political gatherings, speak

to such gatherings on his own behalf when he is a candidate for election or re-election, identify himself as a member of a political party, and contribute to a political party or organization.

- (3) A judge should resign his office when he becomes a candidate either in a party primary or in a general election for a nonjudicial office, except that he may continue to hold his judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if he is otherwise permitted by law to do so.
- (4) A judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.

B. Campaign Conduct.

- (1) A candidate, including an incumbent judge, for a judicial office that is filled either by public election between competing candidates or on the basis of a merit system election:
- (a) should maintain the dignity appropriate to judicial office, and should encourage members of his family to adhere to the same standards of political conduct that apply to him;
- (b) should prohibit public officials or employees subject to his direction or control from doing for him what he is prohibited from doing under this Canon; and except to the extent authorized under subsection B(2) or B(3), he should not allow any other person to do for him what he is prohibited from doing under this Canon;

(c) should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his views on disputed legal or political issues; or misrepresent his identity, qualifications, present position, or other fact.

- (2) A candidate, including an incumbent judge, for a judicial office that is filled by public election between competing candidates should not himself solicit or accept campaign funds, or solicit publicly stated support, but he may establish committees of responsible persons to secure and manage the expenditure of funds for his campaign and to obtain public statements of support for his candidacy. Such committees are not prohibited from soliciting campaign contributions and public support from lawyers. A candidate's committees may solicit funds for his campaign no earlier than [90] days before a primary election and no later than [90] days after the last election in which he participates during the election year. A candidate should not use or permit the use of campaign contributions for the private benefit of himself or members of his family.

Commentary

Unless the candidate is required by law to file a list of his campaign contributors, their names should not be revealed to the candidate.

[Each jurisdiction adopting this Code should prescribe a time limit on soliciting campaign funds that is appropriate to the elective process therein.]



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

NORTHERN CHEYENNE AGENCY
LAME DEER, MONTANA 59043

IN REPLY REFER TO:

Executive Direction
Code 100

OCT 27 1997

NORTHERN CHEYENNE TRIBE, INC.
ADMINISTRATION

OCT 28 1997

RECEIVED

Mr. William Walks Along, President
Northern Cheyenne Tribal Council
Lame Deer, Montana

Dear Mr. William Walks Along,

Enclosed is the original of the Northern Cheyenne Tribal Council Ordinance No. 1(98) enacted by the Council October 6, 1997 and received in this office on October 21, 1997.

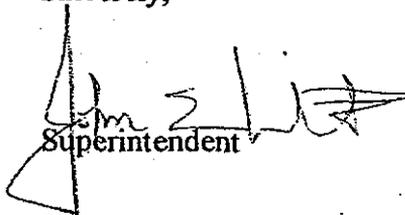
Ordinance No. DOI No. 1 (98) - adopts the Separation of Powers Ordinance.

The Constitutional Amendments in Article XI established the Separation of Powers for the Northern Cheyenne Tribal Government. This ordinance will implement the Separation of Powers and reorganize the Judicial Branch of the Tribal Government.

The Northern Cheyenne Tribal Council has the authority to take this action via Article IV, Section 1 (I) of the Constitution and By-Laws.

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

Sincerely,


Superintendent

NORTHERN CHEYENNE RESERVATION
LAME DEER, MONTANA

ORDINANCE NO. 1 (98) DOI

ADOPTION OF SEPARATION OF POWERS ORDINANCE.

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

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

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

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

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

THEREFORE, BE IT ORDAINED AS FOLLOWS:

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

CERTIFICATION

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

for Norma Bourneau UP
William Walksalong, President
Northern Cheyenne Tribe

ATTEST:

Sharlene Evans
Sharlene Evans, Secretary
Northern Cheyenne Tribe

APPROVED: *[Signature]*
SUPERINTENDENT

NORTHERN CHEYENNE TRIBE

SEPARATION OF POWERS ORDINANCE

Final — 10/6/97

TABLE OF CONTENTS

CHAPTER 1. DEFINITIONS

1.1	Definitions	1
a.	"Appellate Court"	1
b.	"Appellate Judge"	1
c.	"Associate Appellate Judge"	1
d.	"Associate Trial Judge"	1
e.	"Automatic Removal"	1
f.	"Chapter"	1
g.	"Chief Appellate Judge"	1
h.	"Chief Trial Judge"	1
i.	"Code of Judicial Conduct"	1
j.	"Constitutional Claim"	1
k.	"Constitutional Court"	1
l.	"Council Enactment"	1
m.	"Court Clerk"	2
n.	"Declaratory Judgment"	2
o.	"Domestic Relations Code"	2
p.	"Effective Date"	2
q.	" <i>en banc</i> "	2
r.	"Executive Branch"	2
s.	"Heirship and Probate Code"	2
t.	"Judge"	2
u.	"Judge Pro Tem"	2
v.	"Judicial Branch"	2
w.	"Judicial Review"	2
x.	"Juvenile Code"	2
y.	"Law and Order Code"	2
z.	"Misdemeanor Involving Moral Turpitude"	2
aa.	"Northern Cheyenne Court"	3
bb.	"Office of the Court Clerk"	3
cc.	"Regular Presidential Election"	3
dd.	"Removal"	3
ee.	"Removal by Complaint"	3
ff.	"section"	3
gg.	"Term of Office" or "Term"	3
hh.	"Trial Court"	3
ii.	"Trial Judge"	3
jj.	"Tribal Constitution and Bylaws"	3
kk.	"Tribal Entity"	3
ll.	"Tribal Representative"	3
mm.	"Tribe" and "Tribal"	3

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

2.1	Constitutional Basis	4
a.	Article XI	4
b.	Article IV, Section 1(i)	4
c.	Judicial Branch a Distinct Branch of Tribal Government	4
2.2	Purpose	5
2.3	Relationship to Law and Order Code	5
2.4	Implementation Period	5

CHAPTER 3. COMPOSITION OF JUDICIAL BRANCH

3.1	Composition	5
-----	-------------------	---

CHAPTER 4. TRIAL COURT

4.1	Court of General Jurisdiction	5
4.2	Trial Judges	5
4.3	Selection of Chief Trial Judge	6
4.4	Authority of Chief Trial Judge	6

CHAPTER 5. APPELLATE COURT

5.1	Hears All Appeals	6
5.2	Appellate Judges	6
5.3	Selection of Chief Appellate Judge	6
5.4	Authority of Chief Appellate Judge	7
5.5	One Judge Review; En Banc Review	7
5.6	Review on Record Below	7

CHAPTER 6. CONSTITUTIONAL COURT

6.1	Judicial Review	7
6.2	Three-Judge Panel	7
6.3	Exclusive and Original Jurisdiction Over Constitutional Claims	7
6.4	Relief	8
6.5	Participation of Tribal Council	8
6.6	Procedures and Rules	8
6.7	Standing; Case or Controversy	8
6.8	Principles of Judicial Restraint	8
6.9	Certification of Constitutional Claim by Other Courts	9
6.10	Limited Waiver of Immunity	9
6.11	Other Claims or Relief	9
6.12	Removals	10
6.13	Decisions Binding	10
6.14	Implementation of Declaratory Judgment Vindicating a Constitutional Claim	10

CHAPTER 7. OFFICE OF THE COURT CLERK

7.1	Clerk's Office	10
7.2	Clerk's Duties	11
7.3	Appointment and Term of Clerk	11
7.4	Removal	11

CHAPTER 8. QUALIFICATIONS OF JUDGES

8.1	Certification of Qualifications	11
-----	---------------------------------------	----

8.2	Age	11
8.3	Tribal Membership	11
8.4	Education and Bar Membership	11
8.5	No Felony Conviction	11
8.6	No Serious Misdemeanor Conviction Within 10 Years	11
8.7	No Removal Within Three Years	12
8.8	Domicile	12
8.9	Not a Party to Tribal Court Proceedings	12
8.10	Legal Knowledge	12
8.11	Legal Skills	12
8.12	Deal with Conflict	12
8.13	Familiarity with Cheyenne Language	12

CHAPTER 9. JUDGES' TERMS OF OFFICE

9.1	Four-Year Terms	12
9.2	Serve Until Successor Elected or Appointed	12
a.	Trial Judges	12
b.	Appellate Judges	13

CHAPTER 10. ELECTION OF TRIAL JUDGES

10.1	Primary and General Elections; Filing Fee	13
10.2	First Election	13
10.3	Regular Elections	13
10.4	Filling Vacancies	13
10.5	Amended Revised Election Ordinance	13

CHAPTER 11. APPOINTMENT OF APPELLATE JUDGES

11.1	Appointment	14
11.2	Expiration of Term	14
11.3	Death, Resignation or Removal	14

CHAPTER 12. ADJUSTMENT OF JUDGESHIPS

12.1	Retained Power to Add Judges or Adjust Their Work Schedules	14
12.2	Added Trial Judges	14
12.3	Added Appellate Judges	14
12.4	Expiration of Term	14

CHAPTER 13. OVERSIGHT OF JUDICIAL BRANCH

13.1	Audits, Reports and Removal	15
a.	Annual Audits	15
b.	Annual Reports	15
c.	Removal Proceedings	15

CHAPTER 14. TRIAL AND APPELLATE COURT JURISDICTION

14.1	Civil Jurisdiction	15
14.2	Criminal Jurisdiction	15
14.3	Subject Matter Jurisdiction	16
14.4	Sovereign Immunity	16

CHAPTER 15. JUDICIAL TRAINING, CODE OF CONDUCT, COMPENSATION

15.1	Judicial Training	16
a.	Annual Training	16
b.	Subjects	17
c.	Conduct of Training	17
15.2	Code of Judicial Conduct	17

15.3	Judge's Compensation	17
------	----------------------------	----

CHAPTER 16. JUDGES PRO TEM

16.1	Appointment of Panel; Removal of Judge Pro Tem	17
16.2	Qualifications	17
16.3	Assignment	17
16.4	Pro Tem Assignment of Sitting Judges	18

CHAPTER 17. REMOVAL OF JUDGES

17.1	Exclusive Method -- Before Constitutional Court	18
17.2	Automatic Removal	18
a.	Conviction of Felony	18
b.	Conviction of Misdemeanor Involving Moral Turpitude	18
c.	Lack of Qualifications	18
d.	Confirmation by Constitutional Court	19
e.	Effect of Subsequent Vacation of Conviction	20
17.3	Removal by Complaint	20
a.	Complaint	20
b.	Grounds	20
c.	Withdrawal of Complaint	21
d.	Review by Tribal Secretary	21
e.	Review by Constitutional Court	21
f.	Timelines	21
g.	Hearing	21
h.	Decision	22
17.4	Effect of Removal on Future Eligibility for Judge	22
a.	Automatic Removal -- Felony	22
b.	Automatic Removal -- Misdemeanor Involving Moral Turpitude	22
c.	Removal by Complaint	22

CHAPTER 18. FUNDING FOR JUDICIAL BRANCH

18.1	Per Regular Tribal Budget	23
18.2	Independent Fund Raising	23

18.3 Remittance of Court Revenues to Treasurer23

CHAPTER 19. AMENDMENT OR REPEAL

19.1 Two-Thirds Council Vote23

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

CHAPTER 1. DEFINITIONS

1.1 Definitions. When used in this Ordinance, the following terms shall have the following meanings:

- a. "Appellate Court" means the appellate court of the Northern Cheyenne Court established and operating under Chapter 5.
- b. "Appellate Judge" means a judge of the Appellate Court, serving as provided in section 5.2.
- c. "Associate Appellate Judge" means an associate judge of the Appellate Court.
- d. "Associate Trial Judge" means an associate judge of the Trial Court.
- e. "Automatic Removal" means the removal of a Judge because of conviction of a felony, conviction of a Misdemeanor Involving Moral Turpitude, or lack of required qualifications, as confirmed by the Constitutional Court under section 17.2.
- f. "Chapter" means a chapter of this Ordinance.
- g. "Chief Appellate Judge" means the chief judge of the Appellate Court, selected as provided in section 5.3.
- h. "Chief Trial Judge" means the chief judge of the Trial Court, selected as provided in section 4.3.
- i. "Code of Judicial Conduct" means the code of conduct for Judges reaffirmed or adopted under section 15.2.
- j. "Constitutional Claim" means a claim between any parties, whether made in a civil or criminal context, that a resolution, ordinance, code or other legislative enactment of the Tribal Council adopted after the Effective Date of this Ordinance is in whole or in part invalid because it violates: (i) the Tribal Constitution and Bylaws; (ii) a referendum adopted under Article VIII of the Tribal Constitution; (iii) a Tribal resolution, ordinance or code; or (iv) applicable federal law including without limitation the Indian Civil Rights Act.
- k. "Constitutional Court" means the constitutional court of the Northern Cheyenne Court established and operating under Chapter 6.
- l. "Council Enactment" means the resolution, ordinance, code or other legislative enactment of the Tribal Council which is the subject of a Constitutional Claim.

- m. "Court Clerk" means the court clerk in charge of the Office of the Court Clerk, appointed and functioning under Chapter 7.
- n. "Declaratory Judgment" means a final declaration by the Constitutional Court under section 6.4 that a Constitutional Claim is in whole or in part valid or invalid.
- o. "Domestic Relations Code" means Title VIII of the Law and Order Code (as amended or supplemented) now or hereafter in force.
- p. "Effective Date" means the date on which this Ordinance has been enacted by the Tribal Council, signed by the Tribal President, and reviewed by the Secretary of the Interior or his authorized representative.
- q. "*en banc*" means three Appellate Judges sitting as a panel as provided in section 5.5.
- r. "Executive Branch" means the Tribal President, Vice President, Secretary and Treasurer, and the administrative agencies, departments and other instrumentalities of the Executive Branch.
- s. "Heirship and Probate Code" means Title IX of the Law and Order Code (as amended or supplemented) now or hereafter in force.
- t. "Judge" means any one of the Chief Trial Judge, an Associate Trial Judge, the Chief Appellate Judge, or an Associate Appellate Judge.
- u. "Judge Pro Tem" means a temporary judge appointed and assigned under Chapter 16 to temporarily fill-in for a sitting Judge.
- v. "Judicial Branch" means the Trial Court, Appellate Court, Constitutional Court, and Office of the Court Clerk.
- w. "Judicial Review" means the power of the Constitutional Court to review and declare unlawful legislative actions of the Tribal Council, as provided in Chapter 6.
- x. "Juvenile Code" means Title III of the Law and Order Code (as amended or supplemented) now or hereafter in force.
- y. "Law and Order Code" means the Tribe's Law and Order Code, consisting of Titles I through IX (as amended or supplemented) now or hereafter in force.
- z. "Misdemeanor Involving Moral Turpitude" means a misdemeanor or gross misdemeanor involving an intentional act or omission which is vile, immoral, or otherwise gravely violative of the moral sentiments or accepted moral standards of the Tribal community. This shall include, by way of example but not limitation, an

intentional act or omission involving violence, child abuse, spousal abuse, manufacture or distribution of alcohol, drugs or other mind-altering substance, or theft or other dishonesty.

- aa. "Northern Cheyenne Court" means the Trial Court, Appellate Court and Constitutional Court.
- bb. "Office of the Court Clerk" means the office of the Court Clerk established and operating under Chapter 7.
- cc. "Regular Presidential Election" means the regular Tribal election to be held, in accordance with the Revised Tribal Election Ordinance (as it may be amended), in November 2000 and on the dates set for regular Congressional elections every four years thereafter, for Tribal President, Tribal Vice President, open seats on the Tribal Council, and all Trial Judges.
- dd. "Removal" means Automatic Removal or Removal by Complaint of a Judge under Chapter 17.
- ee. "Removal by Complaint" means removal of a Judge by the Constitutional Court as a result of the filing and processing of a Complaint as provided in section 17.3.
- ff. "section" means a section of this Ordinance.
- gg. "Term of Office" or "Term" means the term of office of a Judge as described in Chapter 9.
- hh. "Trial Court" means the trial court of the Northern Cheyenne Court established and operating under Chapter 4..
- ii. "Trial Judge" means a judge of the Trial Court.
- jj. "Tribal Constitution and Bylaws" means the constitution and bylaws of the Tribe, as amended in 1960 and 1996, and as it may be further amended.
- kk. "Tribal Entity" means any governmental or proprietary branch, division, department, agency or other instrumentality of the Tribe.
- ll. "Tribal Representative" means any officer, councilperson, board member, director, executive, other employee, or agent of the Tribe or any Tribal Entity.
- mm. "Tribe" means and "Tribal" refers to the Northern Cheyenne Tribe.

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

2.1 Constitutional Basis.

- a. **Article XI.** Article XI of the Tribal Constitution in its entirety provides:

SEPARATION OF POWERS

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

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

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

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

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

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

- c. **Judicial Branch a Distinct Branch of Tribal Government.** Under the above Constitutional provisions: The Judicial Branch is one of the three distinct branches of Tribal government. Once the Judicial Branch is established by the Tribal Council,

neither the Legislative Branch nor the Executive Branch may exercise powers granted to the Judicial Branch, except if otherwise provided in the Tribal Constitution and Bylaws, or Tribal or federal law.

- 2.2 **Purpose.** The purpose of this Ordinance is to reorganize the Judicial Branch to facilitate implementation of the Tribal Constitutional requirement of separation of powers.
- 2.3 **Relationship to Law and Order Code.** This Ordinance does not repeal the Tribal Law and Order Code, but does include provisions which are inconsistent with the Law and Order Code. In all cases of such inconsistency, or inconsistency with any other Tribal resolution, ordinance or code in force on the Effective Date of this Ordinance, the provisions of this Ordinance shall be controlling. After the Effective Date of this Ordinance, the Tribal Council shall prepare and adopt formal amendments of the Law and Order Code to fully conform it to this Ordinance.
- 2.4 **Implementation Period.** To enable orderly implementation of the reorganization of the Judicial Branch under in this Ordinance, there shall be a transition period for the implementation of Chapters 3 through 17 ("Implementation Period"). All involved Tribal governmental personnel shall make best efforts to complete the reorganization of the Judicial Branch by the close of the Implementation Period. It is estimated that the Implementation Period will end no earlier than 180 days after the Effective Date of this Ordinance.

CHAPTER 3. COMPOSITION OF JUDICIAL BRANCH

- 3.1 **Composition.** The Judicial Branch shall consist of the:
- Trial Court described in Chapter 4;
 - Appellate Court described in Chapter 5;
 - Constitutional Court described in Chapter 6; and
 - Office of the Court Clerk described in Chapter 7.

CHAPTER 4. TRIAL COURT

- 4.1 **Court of General Jurisdiction.** The Trial Court shall be a trial-level court of general civil jurisdiction and limited criminal jurisdiction, including without limitation jurisdiction over matters arising under the Tribe's Juvenile Code, Domestic Relations Code, and Heirship and Probate Code. The scope of the Trial Court's jurisdiction is set forth in Chapter 14.
- 4.2 **Trial Judges.** The Trial Court shall have at least two full-time Trial Judges, including a Chief Trial Judge and one or more Associate Trial Judges. Each Trial Judge shall:

- a. possess the qualifications applicable to Trial Judges set forth in Chapter 8;
- b. be elected as provided in Chapter 10 (or appointed as permitted by section 10.4 or 12.2);
- c. have a Term of Office as provided in Chapter 9; and
- d. be subject to Removal from office as provided in Chapter 17.

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

4.4 Authority of Chief Trial Judge. The Chief Trial Judge shall have overall administrative authority over the Trial Court, including without limitation authority to assign cases among the Trial Judges, assign Judges Pro Tem to Trial Court proceedings as provided in section 16.3, manage the Trial Court calendar, and supervise the Court Clerk.

CHAPTER 5. APPELLATE COURT

5.1 Hears All Appeals. The Appellate Court shall hear all appeals and other authorized requests for appellate review of decisions of the Trial Court.

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

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

5.3 Selection of Chief Appellate Judge. The Tribal President with the concurrence of the Tribal Council shall designate one Appellate Judge as the Chief Appellate Judge. The designee will serve as Chief Appellate Judge through his or her Term of Office as Appellate Judge, provided that the Tribal President with the concurrence of the Tribal Council, in their

absolute discretion, may at any time designate another Appellate Judge as the Chief Appellate Judge.

- 5.4 Authority of Chief Appellate Judge.** The Chief Appellate Judge shall have overall administrative authority over the Appellate Court and the Constitutional Court, including without limitation authority to assign cases among the Appellate Judges, designate *en banc* Appellate panels, designate Constitutional Court panels, assign Judges Pro Tem to Appellate Court or Constitutional Court proceedings as provided in section 16.3, and manage the calendars of the Appellate Court and the Constitutional Court.
- 5.5 One Judge Review; En Banc Review.** All appeals and other authorized requests for review before the Appellate Court shall be heard and decided by one Appellate Judge. However, *en banc* review (by a panel of three Appellate Judges) of the decision of a single Appellate Judge may be sought and shall be granted if two Appellate Judges, in their absolute discretion, vote in favor of *en banc* review. Requests for *en banc* review must be in writing and filed and served within 30 days of issuance of the single Appellate Judge's decision. Any other party may file and serve a written response to the request within 10 days of its receipt of the request. The Court Clerk shall assure that copies of all requests for *en banc* review and all responses thereto are promptly distributed to each Appellate Judge.
- 5.6 Review on Record Below.** All appeals and other authorized requests for review before the Appellate Court shall be based and decided on the files, records and transcripts of the Trial Court proceedings. No new evidence may be introduced or trial *de novo* conducted in the Appellate Court.

CHAPTER 6. CONSTITUTIONAL COURT

- 6.1 Judicial Review.** The Constitutional Court shall have the exclusive power of Judicial Review -- the power to review and declare unlawful legislative actions of the Tribal Council as provided in this Chapter
- 6.2 Three-Judge Panel.** The Constitutional Court shall consist of three Judges of the Appellate Court, sitting as a panel and acting by majority vote. All claims brought in the Constitutional Court shall be tried to and adjudicated by the panel; there shall be no jury trials in the Constitutional Court.
- 6.3 Exclusive and Original Jurisdiction Over Constitutional Claims.** The Constitutional Court shall have original jurisdiction over, and be the exclusive Tribal judicial forum to adjudicate, any and all claims ("Constitutional Claims") between any parties, whether made in a civil or criminal context, that a resolution, ordinance, code or other legislative enactment of the Tribal Council adopted after the Effective Date of this Ordinance ("Council Enactment") is in whole or in part invalid because it violates:
- a. the Tribal Constitution and Bylaws;

- b. a referendum adopted under Article VIII of the Tribal Constitution;
- c. a Tribal resolution, ordinance or code; or
- d. applicable federal law including without limitation the Indian Civil Rights Act;

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

- 6.4 Relief.** Unless authorized to grant Other Relief as provided in section 6.11, the Constitutional Court shall have authority to issue only one form of relief on a Constitutional Claim -- a declaration that the Claim is in whole or in part valid or invalid ("Declaratory Judgment"), along with such supporting findings of fact, conclusions of law, and/or opinion as the Constitutional Court considers necessary or appropriate.
- 6.5 Participation of Tribal Council.** The Tribal Council, as an entity, shall be made a party-defendant in any Constitutional Court proceedings on a Constitutional Claim, whether the claim is brought directly in the Constitutional Court or is certified to the Court under section 6.9.
- 6.6 Procedures and Rules.** Except to the extent inconsistent with this Chapter 6, Constitutional Claims and Other Claims (other than appeals) authorized under section 6.11, shall be initiated in and adjudicated by the Constitutional Court in accordance with all relevant trial-level rules and procedures, evidentiary standards, and statutes of limitation applicable to trial-level civil actions under the Law and Order Code. In the event of any inconsistency between such provisions of the Law and Order Code and this Chapter, the provisions of this Chapter shall be controlling. The Constitutional Court shall have continuing authority to adopt general or case-specific special procedural rules for its proceedings (including without limitation proceedings on Constitutional Claims certified under section 6.9), to cover matters not addressed by the foregoing provisions of this section 6.6.
- 6.7 Standing; Case or Controversy.** In order to bring a Constitutional Claim, a party must have standing to do so and there must be an actual case or controversy, under recognized legal principles.
- 6.8 Principles of Judicial Restraint.** In adjudicating Constitutional Claims, the Constitutional Court shall observe all established doctrines of judicial restraint, including without limitation the following:
- a. requiring exhaustion of available remedies within the Executive Branch and/or the Legislative Branch;

- b. presuming that the Council Enactment is valid and requiring that its invalidity be clearly and convincingly shown;
- c. deferring to the Tribal Council's judgment on policy matters and political questions;
- d. deferring to determinations of administrative agencies within the Executive Branch in matters within their particular expertise;
- e. avoiding Constitutional issues;
- f. deciding on non-Constitutional grounds;
- g. abstaining from hypothetical or moot questions; and
- h. upholding all valid and severable portions of the enactment or other action of the Tribal Council under challenge.

6.9 Certification of Constitutional Claim by Other Courts. In the event a Constitutional Claim is made in a civil or criminal proceeding between any parties in another Tribal Court or other Tribal adjudicatory body (if any) (together "Other Tribal Adjudicatory Body"), such Other Tribal Adjudicatory Body shall not have jurisdiction to adjudicate the Constitutional Claim, but may certify it to the Constitutional Court for adjudication. Subject to and in accordance with the provisions of this Chapter 6, the Constitutional Court shall have authority to adjudicate and issue a Declaratory Judgment on the Constitutional Claim so certified. Upon so certifying a Constitutional Claim, and pending the issuance of a Declaratory Judgment on it by the Constitutional Court, the Other Tribal Adjudicatory Body may, as it considers appropriate, proceed with the adjudication of any other claim (other than a Constitutional Claim) within its jurisdiction in the proceeding pending before it. In addition, the Constitutional Court shall have authority to adjudicate Constitutional Claims certified to it by any federal, state or tribal court or adjudicatory body. Constitutional Claims shall be certified to the Constitutional Court by execution and delivery of a written instrument generally in the form of the attached Exhibit A. Claims so certified shall be adjudicated in accordance with all rules, procedures and standards set forth, referred to, or authorized in this Chapter for Constitutional Claims initiated in the first instance in the Constitutional Court.

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

6.11 Other Claims or Relief. In addition to Constitutional Claims, the Tribal Council by

resolution, ordinance or code may in its absolute discretion explicitly empower the Constitutional Court to:

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

6.12 Removals. The Constitutional Court shall confirm the Automatic Removal of a Judge as provided in section 17.2, and shall hear and decide any Complaint for Removal of a Judge as provided in section 17.3.

6.13 Decisions Binding. All Declaratory Judgments of the Constitutional Court on matters within its jurisdiction:

- a. shall be final, conclusive and binding on the Tribal Council, all other parties to the Constitutional Court proceeding, the Judicial Branch, and any Other Tribal Adjudicatory Body certifying the Constitutional Claim under section 6.9; and
- b. may not be modified, vacated or reversed by the Tribal Council or the Executive Branch.

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

CHAPTER 7. OFFICE OF THE COURT CLERK

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

- 7.2 **Clerk's Duties.** The Court Clerk shall have administrative authority over the Office of the Court Clerk and its staff, and overall responsibility for: maintenance of all court files, exhibits, evidence and records; receipt of all filing fees, fines, and other revenues; preparation and transmission of all records on appeal and transcripts to the Appellate Court; and performance of all other necessary duties and functions of the Office of the Court Clerk.
- 7.3 **Appointment and Term of Clerk.** The Court Clerk shall be nominated by the Chief Trial Judge and appointed by the Tribal President with the concurrence of the Tribal Council. The Court Clerk shall serve for the same four-year Term of Office established for Judges in Chapter 9, and until a successor is appointed and takes office. Upon the death, resignation or removal of a Court Clerk, a successor Clerk shall be appointed who shall serve for the remainder of the former Clerk's term of office.
- 7.4 **Removal.** The Court Clerk may be removed or suspended from office at any time by concurrence of the Chief Trial Judge, Tribal President and Tribal Council, in their absolute discretion.

CHAPTER 8. QUALIFICATIONS OF JUDGES

- 8.1 **Certification of Qualifications.** Before a candidate for the position of Trial Judge is placed on a primary or general election ballot (or appointed under section 10.4 or 12.2), and before a person is appointed to the position of Appellate Judge or appointed to the panel of Judges Pro Tem, the Tribal President must (a) assure that the qualifications of the candidate for appointment have been carefully investigated, and (b) certify in writing that such an investigation has been performed and that the candidate possesses the requisite qualifications.
- 8.2 **Age.** All Judges must be at least 30 years old.
- 8.3 **Tribal Membership.** All Trial Judges must be enrolled members of the Tribe. At least one Appellate Judge must be an enrolled member of the Tribe.
- 8.4 **Education and Bar Membership.** Every Judge must be a high school graduate or hold a G.E.D. certificate or its equivalent. At least two Appellate Judges must have graduated from an accredited law school and be a member of a state bar, which credentials are desirable, but not mandatory, for all other Appellate Judges and all Trial Judges.
- 8.5 **No Felony Conviction.** A Judge must never have been convicted of a felony in any tribal, federal or state court, whether after a plea of guilty or nolo contendere, a trial, or other procedure. The foregoing shall not include convictions which have been vacated.
- 8.6 **No Serious Misdemeanor Conviction Within 10 Years.** Within the 10-year period preceding the date set for the primary election or the date of appointment to office, as the case may be, and at all times thereafter through the end of the Term of Office, a Judge must

not have been convicted of a Misdemeanor Involving Moral Turpitude in any tribal, federal or state court, whether after a plea of guilty or nolo contendere, a trial, or other procedure. The foregoing shall not include convictions which have been vacated.

- 8.7 No Removal Within Three Years.** Within the three-year period preceding (a) the date set for the primary election (and through the date of the general election) or (b) the date of appointment to office, as the case may be, a candidate for Judge must not have been removed as a Judge on a Complaint for Removal under section 17.3.
- 8.8 Domicile.** All Trial Judges must be domiciled on the Reservation throughout the Term of Office. At least one Appellate Judge must be domiciled within 150 miles of Lane Deer throughout the Term of Office. As used herein, the term "domicile" means the residence in which a person customarily and actually resides during the applicable time period.
- 8.9 Not a Party to Tribal Court Proceedings.** At the time of filing for election to office or of appointment to office, as the case may be, a candidate for Judge must not be a plaintiff or defendant in any civil or criminal action pending in the Northern Cheyenne Court.
- 8.10 Legal Knowledge.** All Judges must be familiar with the Tribal Constitution, the Tribal Law and Order Code, civil and criminal procedures, the Indian Civil Rights Act, the Indian Child Welfare Act, and federal Indian law generally.
- 8.11 Legal Skills.** All Judges must have ability and competence to: conduct efficient and organized proceedings; research and apply applicable law; timely decide or otherwise resolve disputes; and set forth clear and reasoned decisions and orders in writing.
- 8.12 Deal with Conflict.** All Judges must be able to deal effectively with people in highly emotional, adversarial and confrontational situations.
- 8.13 Familiarity with Cheyenne Language.** It is desirable, but not mandatory, that all Judges have some familiarity with the Cheyenne language.

CHAPTER 9. JUDGES' TERMS OF OFFICE

- 9.1 Four-Year Terms.** There shall be a four-year Term of Office for all Judges, ending with the first Regular Presidential Election occurring after appointment, except that it is projected that the first set of Judges will not take office until approximately late 1997 and will therefore have three-year Terms approximately, ending with the Regular Presidential Election in the year 2000.
- 9.2 Serve Until Successor Elected or Appointed.**
- a. **Trial Judges.** Each Trial Judge shall serve until his or her Term of Office expires and thereafter until the election and swearing-in of his or her successor. The person

whose Term has expired may be re-elected to office.

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

CHAPTER 10. ELECTION OF TRIAL JUDGES

- 10.1 Primary and General Elections; Filing Fee.** All Trial Judges shall be selected through a primary election followed by a general election, both conducted at-large, and otherwise generally conducted on the same conditions and under the same procedures as those applicable to the selection of the Tribal President and Vice President, as more particularly set forth in the Revised Tribal Election Ordinance as amended pursuant to section 10.5 below (as it may be further amended) ("Amended Revised Election Ordinance"). All persons filing to run for Trial Judge must pay a non-refundable \$200 filing fee as more particularly described in section 7.a of the Amended Revised Election Ordinance, provided that, for each Regular Presidential Election, the Tribal Council may adjust the filing fee to account for inflation or other factors.
- 10.2 First Election.** As promptly as reasonably possible after the Effective Date of this Ordinance, an at-large primary election followed by an at-large general election shall be held to elect two Trial Judges. Each winner in that election shall have a Term of Office which expires upon the occurrence of the Regular Presidential Election in the year 2000.
- 10.3 Regular Elections.** In the Regular Presidential Election in the year 2000, and in the Regular Presidential Election every four years thereafter, there shall be an at-large primary election followed by an at-large general election to fill all Trial Judge positions. The winner in each regular election shall serve a four-year Term of Office.
- 10.4 Filling Vacancies.** If the office of Trial Judge becomes vacant due to death, resignation, removal, or other cause, there shall be an at-large primary election followed by an at-large general election to fill the vacancy for the remainder of the Term of Office, provided that, if the vacancy in office occurs when there is less than 180 days remaining in the Term of Office, the Tribal Council in its discretion may choose not to hold the election, whereupon the Tribal Council shall appoint a qualified person to the office.
- 10.5 Amended Revised Election Ordinance.** Contemporaneous with or promptly after the adoption of this Ordinance, the Tribal Council shall prepare and adopt amendments of the Revised Election Ordinance to implement the foregoing provisions of this Chapter 10.

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

CHAPTER 11. APPOINTMENT OF APPELLATE JUDGES

- 11.1 Appointment.** All Appellate Judges shall be appointed by the Tribal President with the concurrence of the Tribal Council.
- 11.2 Expiration of Term.** Upon expiration of the Term of Office, a successor Appellate Judge shall be appointed for the four-year Term described in section 9.1.
- 11.3 Death, Resignation or Removal.** Upon the death, resignation or Removal of an Appellate Judge, a successor shall be appointed to fill the vacancy. The appointee shall serve for the remainder of the former Appellate Judge's Term of Office.

CHAPTER 12. ADJUSTMENT OF JUDGESHIPS

- 12.1 Retained Power to Add Judges or Adjust Their Work Schedules.** In light of the needs of the Northern Cheyenne Court and available Tribal financial resources, the Tribal Council may at any time temporarily or permanently: increase the number of Judges specified in this Ordinance for any Court; and convert any Judgeship specified as a part-time position in this Ordinance to a full-time position (or vice versa). Judges added under this section are referred to in this Chapter as "Added Judges," "Added Trial Judges," or "Added Appellate Judges," as the case may be.
- 12.2 Added Trial Judges.** If it is intended that an Added Trial Judge will hold office for a term of 180 days or more, the Added Trial Judge shall be selected through a primary election followed by a general election in the manner described in Chapter 10. If, however, it is intended that an Added Trial Judge will hold office for a term less than 180 days, the Tribal Council in its discretion may choose not to hold such election, whereupon the position shall be filled through appointment by the Tribal President with the concurrence of the Tribal Council.
- 12.3 Added Appellate Judges.** All Added Appellate Judges shall be appointed by the Tribal President with the concurrence of the Tribal Council.
- 12.4 Expiration of Term.** In no case may any Added Judge have a term of office which expires after expiration of the four-year Term of Office specified in section 9.1 during which the Added Judge was elected or appointed, plus the additional period described in section 9.2.

CHAPTER 13. OVERSIGHT OF JUDICIAL BRANCH

13.1 Audits, Reports and Removal. The following mechanisms are intended to enable the Tribal Council, Tribal membership, and Judicial Branch to monitor and take action in light of the capabilities or performance of the Judicial Branch:

- a. **Annual Audits.** The annual Tribal financial audit shall include a financial audit of the Judicial Branch.
- b. **Annual Reports.** Within 90 days after the close of each fiscal year, the Chief Trial Judge shall present to the Tribal President and Tribal Council a written report on the operations of the Judicial Branch during the preceding fiscal year. The report may also include recommendations for action by the Tribal Council or others with respect to the future operations or needs of the Judicial Branch.
- c. **Removal Proceedings.** A Judge may be removed for cause through proceedings for Automatic Removal under section 17.2 or Removal by Complaint under section 17.3.

CHAPTER 14. TRIAL AND APPELLATE COURT JURISDICTION

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

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

14.2 Criminal Jurisdiction. The Trial Court and Appellate Court shall have and exercise the full reach of the Tribe's lawful criminal jurisdiction (except for matters committed to the

exclusive jurisdiction of the Constitutional Court) over all offenses committed by Tribal members or other Indians on the Reservation or on Off-Reservation Tribal Lands, and over any other offenses, persons or entities within the Tribe's criminal jurisdiction under applicable law, compact, or consensual arrangement.

14.3 Subject Matter Jurisdiction. Applying appropriate choice of law and jurisdictional rules, the Trial Court and Appellate Court shall hear civil claims and criminal matters within their jurisdiction (as set forth in sections 14.1 and 14.2) arising under:

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

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

CHAPTER 15. JUDICIAL TRAINING, CODE OF CONDUCT, COMPENSATION

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

- a. **Annual Training.** Each Judge will receive training at least annually.

- b. **Subjects.** The training must cover subjects relevant to the Judge's function, including without limitation pre-trial, trial, or appellate procedures, discovery, legal research, legal writing, Tribal law, and federal Indian law.
- c. **Conduct of Training.** The training shall be conducted by authorities in their respective fields.

15.2 **Code of Judicial Conduct.** The Tribal Council, in consultation with the Chief Trial Judge and Chief Appellate Judge, shall either reaffirm the Code of Judicial Conduct for the Judicial Branch in force on the Effective Date of this Ordinance ("Current Code"), or adopt an amended or new Code of Judicial Conduct based on American Bar Association or other appropriate models. Until such Tribal Council action, the Current Code shall remain in force.

15.3 **Judge's Compensation.** Except for cases where the Tribal Council, acting under section 12.1, converts a full-time Judgeship to a part-time Judgeship, the compensation of a Judge may not be reduced while the Judge is in office, unless the reduction is part of a program which provides for comparable and proportionate reductions in compensation for the President, Vice President and all Tribal Council members.

CHAPTER 16. JUDGES PRO TEM

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

16.2 **Qualifications.** To serve as a Judge Pro Tem in a particular Court, one must possess the qualifications set forth in sections 8.2, 8.4 - 8.7, and 8.9 - 8.12 for Judges of that Court, provided that a sitting or recently retired judge of any federal or state court shall be deemed fully qualified to sit as a Judge Pro Tem in the Trial Court, Appellate Court or Constitutional Court.

16.3 **Assignment.** For the temporary purpose described in section 16.1 above, the Chief Trial Judge may assign a qualified Judge Pro Tem to serve in the Trial Court and the Chief Appellate Judge may assign a qualified Judge Pro Tem to serve in the Appellate Court or Constitutional Court, provided that, in removal proceedings under Chapter 17 directed at an Appellate Judge, only the Chief Trial Judge may assign a Judge Pro Tem to the

Constitutional Court as provided in section 17.1.

- 16.4 **Pro Tem Assignment of Sitting Judges.** If assignment of a Judge Pro Tem is not feasible, for the temporary purpose described in section 16.1 above, the Chief Trial Judge and Chief Appellate Judge may jointly designate (a) any Trial Judge to serve pro tem in the Appellate Court or in the Constitutional Court, or (b) any Appellate Judge to serve in the Trial Court, provided the designee possesses the qualifications for Judge of the Court to which he or she has been assigned as set forth in Chapter 8 and has not previously decided any material matter in the particular case; provided further that, in removal proceedings directed at an Appellate Judge under Chapter 17, only the Chief Trial Judge may assign a Trial Judge to the Constitutional Court as provided in section 17.1.

CHAPTER 17. REMOVAL OF JUDGES

- 17.1 **Exclusive Method -- Before Constitutional Court.** The following shall be the exclusive procedures and standards for removal of any Judge. As described below, there are two types of removal -- Automatic Removal and Removal by Complaint -- both administered and decided by the Constitutional Court. If the removal is directed at an Appellate Judge ("Respondent"), and if there are fewer than three other available sitting Appellate Judges, the Respondent's seat on the Constitutional Court shall be filled in the removal proceedings by a Trial Judge or a qualified Judge Pro Tem designated by the Chief Trial Judge.
- 17.2 **Automatic Removal.** A Judge shall forfeit and be removed from office ("Automatic Removal") as provided in this section 17.2;
- a. **Conviction of Felony.** Automatic Removal shall occur if the Judge, while holding his or her current position as Judge, is convicted of any felony in any tribal, federal or state court, whether after a plea of guilty or nolo contendere, a trial, or other procedure, irrespective of whether the conduct on which the conviction is based occurred before or during the Judge's current term of office.
 - b. **Conviction of Misdemeanor Involving Moral Turpitude.** Automatic Removal shall occur if the Judge, while holding his or her current position as Judge, is convicted of any misdemeanor or gross misdemeanor in any tribal, federal or state court, whether after a plea of guilty or nolo contendere, a trial, or other procedure, which the Constitutional Court determines is a Misdemeanor Involving Moral Turpitude, irrespective of whether the conduct on which the conviction is based occurred before or during the Judge's current term of office.
 - c. **Lack of Qualifications.** Automatic Removal shall occur if the Judge does not possess a qualification for office set forth in this Ordinance, irrespective of whether the lack of qualification arises from events which occurred before or during the Judge's current term of office.

- d. Confirmation by Constitutional Court.** An Automatic Removal shall not take effect until it is confirmed by the Constitutional Court as provided in this subsection d:
- i.** Upon receiving advice it deems reliable that indicates that a Judge ("Respondent") stands convicted of a felony as described in subsection a above or a Misdemeanor Involving Moral Turpitude as described in subsection b above, or lacks any qualification for office as described in subsection c above, the Constitutional Court shall, as a matter of highest priority, proceed with dispatch to determine whether such ground for Automatic Removal in fact exists, and if it does, to confirm the Automatic Removal of the Respondent, in the following manner. Such proceedings shall not be delayed or suspended because judicial proceedings to reconsider, vacate or appeal a conviction described in subsection a or b are pending.
 - ii.** The Constitutional Court shall issue a written notice to the Respondent, Tribal President and Tribal Secretary advising that the Constitutional Court will convene a hearing to determine whether the Automatic Removal of Respondent from office must be confirmed. The notice shall state the date, time and place of the Constitutional Court hearing, and summarize the indicated grounds for Automatic Removal, and shall include a copy of this Ordinance. The hearing shall be held as promptly as possible but no sooner than 10 days from the date of issuance of the written notice.
 - iii.** At the hearing, the Respondent shall be accorded an adequate opportunity to be heard on the matter, and may be represented by an attorney or advocate at his or her own expense. Conviction of a felony or a Misdemeanor Involving Moral Turpitude must be evidenced either by a copy of the judgment of conviction certified by the court in which the Respondent was convicted or by Respondent's sworn admission to such conviction. The Constitutional Court may consider any additional factual or legal materials, information or submissions it deems relevant.
 - iv.** After considering the materials, information and submissions before it, the Constitutional Court shall decide, as the case may be, whether the Respondent stands convicted of a felony as described in subsection a or a Misdemeanor Involving Moral Turpitude as described in subsection b, or lacks any requisite qualification for office as described in subsection c. If the Court decides that such ground for Automatic Removal in fact exists, it shall be dutibound to immediately confirm Respondent's Automatic Removal from office, effective immediately. The Constitutional Court's decision shall be in writing.
 - v.** The decision of the Constitutional Court on Automatic Removal shall be

final, binding on the Tribe and all branches of Tribal government, and not subject to review in any court.

vi. While Automatic Removal proceedings are pending, the Constitutional Court may suspend or otherwise limit Respondent's status or authority as a Judge.

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

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

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

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

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

other mind-altering substance; or

- iv. has grossly or repeatedly violated the Code of Judicial Conduct.
- c. **Withdrawal of Complaint.** At any time prior to the commencement of a hearing under subsection g below, any Complainant may withdraw his or her signature on the Complaint by filing with the Court Clerk a signed and sworn certificate of such withdrawal. If all signatures on a Complaint are so withdrawn, all further proceedings on the Complaint shall terminate. The Court Clerk promptly shall provide true copies of any signature withdrawal(s) to the Respondent, any other Complainant(s), each member of the Constitutional Court, the Tribal President, and the Tribal Secretary
- d. **Review by Tribal Secretary.** Within 7 days after the Filing of the Complaint, the Tribal Secretary shall make best efforts to review the Complaint and any signature withdrawal(s) filed to date, determine the validity and sufficiency of all signatures thereon, and report the results of this review in writing to the Respondent, the Complainant(s), the Court Clerk, each member of the Constitutional Court, and the Tribal President.
- e. **Review by Constitutional Court.** If the report of the Tribal Secretary states that the Complaint is supported by valid signature(s), the Constitutional Court, under such procedures as it considers appropriate, promptly shall review the Complaint and determine: (i) if it meets the formal and procedural requirements of this Ordinance; and (ii) if it alleges grounds and sufficient supporting facts which, if proven to the satisfaction of the Court, would justify Removal by Complaint. The Constitutional Court shall make best efforts to report its determinations on items (i) and (ii) in writing to the Respondent, Complainant(s), Tribal President and Tribal Secretary within 21 days after the Filing of the Complaint. If the Court reports negatively on either item (i) or (ii), the Complaint shall thereupon be deemed dismissed and no further action shall be taken on it. If the Court reports positively on items (i) and (ii), the Court shall make best efforts to schedule a hearing on the Complaint to be commenced within 35 days after the Filing of the Complaint. Pending such a hearing and its decision on the Complaint, the Constitutional Court may suspend or otherwise limit Respondent's status or authority as a Judge.
- f. **Timelines.** On a case-by-case basis, the Constitutional Court may adjust any time period specified in paragraphs d or e above, as it deems warranted.
- g. **Hearing.** If the Constitutional Court determines to hold a hearing on the Complaint, the hearing shall be conducted as follows:
 - i. At least 10 days before the hearing, the Court Clerk shall issue a written notice to the Respondent, Complainant(s), Tribal President and Tribal

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

- ii. The hearing shall be conducted in accordance with such procedures and evidentiary standards as the Constitutional Court considers necessary to afford fair and reasonable opportunity to the Complainant(s) and the Respondent to support and refute the Complaint, and to enable the Court to make an informed and fair decision on the Complaint. The Complainants collectively and the Respondent may each be represented by an attorney or advocate at the hearing at their own expense.
- iii. The hearing shall be conducted in public and on the record. A verbatim stenographically or electronically recorded transcript of the hearing shall be maintained.
- h. **Decision.** After the hearing, the Constitutional Court shall issue a decision on the Complaint. The decision shall be in writing and shall set forth findings of fact, conclusions as to whether grounds for Removal by Complaint have been established, and the Court's decision with respect to such removal. The Constitutional Court may dismiss the Complaint, or may decide that Respondent shall be removed as Judge, that Respondent's status as Judge shall be suspended for no more than 90 days, or may impose conditions on Respondent's continued status or activities as Judge. The decision of the Constitutional Court shall be final, binding on the Tribe and all branches of Tribal government, and not subject to judicial review in any court.

17.4 Effect of Removal on Future Eligibility for Judge.

- a. **Automatic Removal -- Felony.** A Judge Automatically Removed from office due to a felony conviction as provided in section 17.2, shall thereafter not be eligible for election or appointment as a Judge unless the conviction has been vacated and such person possesses all other qualifications for such office set forth in this Ordinance.
- b. **Automatic Removal -- Misdemeanor Involving Moral Turpitude.** A Judge Automatically Removed from office due to conviction of a Misdemeanor Involving Moral Turpitude as provided in subsection 17.2, shall not be eligible for election or appointment as a Judge during the 10-year period following such conviction, unless the conviction has been vacated and such person possesses all other qualifications for such office set forth in this Ordinance.
- c. **Removal by Complaint.** A person who has been removed as a Judge by Complaint as provided in section 17.3, shall not be eligible for election or appointment as a Judge during the three-year period following such removal.

CHAPTER 18. FUNDING FOR JUDICIAL BRANCH

- 18.1 **Per Regular Tribal Budget.** The Tribal Council shall provide funding for the operations of the Judicial Branch in the regular Tribal budget, after consulting with the Chief Trial Judge, the Chief Appellate Judge, and the Court Clerk about funding needs.
- 18.2 **Independent Fund Raising.** With the prior approval of the Tribal Council, the Judicial Branch may independently raise funds for its operations, provided that funds shall not be sought from parties who have, or reasonably may in the future have, matters in litigation within the Judicial Branch. Any funds so raised shall be remitted to the Tribal Treasurer for administration for the benefit of the Judicial Branch and for accountability.
- 18.3 **Remittance of Court Revenues to Treasurer.** Northern Cheyenne Court filing fees, copying charges and other charges, fines and penalties, and other sums paid to the Judicial Branch, shall be remitted to the Tribal Treasurer for administration for the benefit of the Judicial Branch and for accountability.

CHAPTER 19. AMENDMENT OR REPEAL.

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

* * * * *

EXHIBIT A

Form for Certification of Constitutional Claim to Constitutional Court

TO: Court Clerk, Northern Cheyenne Tribal Court

FROM: *[Tribal, Federal or State Court (or Other Adjudicatory Body) Seeking Certification]*

_____ *[signature]* _____ date: _____
Title: Judge (or hearing officer)

RE: Certification of Constitutional Claim to Northern Cheyenne Tribal Constitutional Court

1. A Constitutional Claim, as defined in section 6.3 of the Separation of Powers Ordinance of the Northern Cheyenne Tribe, is at issue in the following case pending before me:

[set forth case name and case number]

I hereby request that the Northern Cheyenne Constitutional Court adjudicate the Constitutional Claim and provide to me a certified copy of its Declaratory Judgment on the Claim, along with any supporting findings of fact, conclusions of law, and/or opinion it may issue.

2. The nature of the Constitutional Claim is as follows:

[set forth description of Constitutional Claim]

3. Attached hereto are true copies of pleadings and documents from our case file which provide relevant background and details on the Constitutional Claim. If the Constitutional Court requires further relevant documents or information, please advise and we will endeavor to provide it.

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

* * * * *

NORTHERN CHEYENNE TRIBE

Hypothetical Examples of Allocation of the Five Additional Council Seats Under Section 3 of this Ordinance

If the District Percentages were as follows, the Five Additional Tribal Council Seats would be allocated among the five Districts as follows:

EXAMPLE 1

<u>District</u>	<u>District Percentage</u>	<u>District Product</u>	<u>Step One (Whole No.) Allocation</u>	<u>Step Two (Fractional) Allocation</u>	<u>Sum of Step Allocations</u>	<u>Total Council Seats</u>
	53% x 5	2.65	2	1	3 + 1	4
	20% x 5	1.00	1	0	1 + 1	2
	13% x 5	0.65	0	1	1 + 1	2
	12% x 5	0.60	0	0	0 + 1	1
	2% x 5	0.10	0	0	0 + 1	1

EXAMPLE 2

<u>District</u>	<u>District Percentage</u>	<u>District Product</u>	<u>Step One (Whole No.) Allocation</u>	<u>Step Two (Fractional) Allocation</u>	<u>Sum of Step Allocations</u>	<u>Total Council Seats</u>
	61% x 5	3.05	3	0	3 + 1	4
	13% x 5	0.65	0	1	1 + 1	2
	11% x 5	0.55	0	1	1 + 1	2
	10% x 5	0.50	0	0	0 + 1	1
	5% x 5	0.25	0	0	0 + 1	1

EXAMPLE 3

<u>District</u>	<u>District Percentage</u>	<u>District Product</u>	<u>Step One (Whole No.) Allocation</u>	<u>Step Two (Fractional) Allocation</u>	<u>Sum of Step Allocations</u>	<u>Total Council Seats</u>
	45% x 5	2.25	2	0	2 + 1	3
	18% x 5	0.90	0	1	1 + 1	2
	17% x 5	0.85	0	1	1 + 1	2
	15% x 5	0.75	0	1	1 + 1	2
	5% x 5	0.25	0	0	0 + 1	1

NORTHERN CHEYENNE TRIBE

CERTIFICATE OF COUNCIL SEAT ALLOCATION FOR TRIBAL
 REGULAR ELECTION OF _____ (1996, 2000, 2004 and every
 four years thereafter)

(To be filed with Tribal Secretary.)

The undersigned, comprising at least a majority of the Tribal Voters Committee, hereby declare and certify as follows:

1. **Membership List.** We have finalized a list of the entire Tribal membership living on and off the Reservation, and have determined that the Tribal membership is distributed as follows among the Reservation Districts:

	Members Associated <u>With District</u>	% of Total <u>Membership</u>
Ashland	_____	_____
Birney	_____	_____
Busby	_____	_____
Lame Deer	_____	_____
Muddy	_____	_____

2. **Allocation of Council Seats.** Based on the above distribution of the Tribal membership, in the manner shown below we have allocated among the Reservation Districts the five Tribal Council seats which are to be allocated in accordance with the percentage of the Tribal membership associated with each District:

	% of Total <u>Membership</u>		<u>Product</u>	Allocation of <u>5 Council Seats</u>		Total District <u>Council Seats</u>
Ashland	_____	x 5	_____	_____	+ 1	_____
Birney	_____	x 5	_____	_____	+ 1	_____
Busby	_____	x 5	_____	_____	+ 1	_____
Lame Deer	_____	x 5	_____	_____	+ 1	_____
Muddy	_____	x 5	_____	_____	+ 1	_____

Committee Member -- Ashland

Date: _____

Committee Member -- Birney

Date: _____

Committee Member -- Busby

Date: _____

Committee Member -- Lane Deer

Date: _____

Committee Member -- Muddy

Date: _____

NORTHERN CHEYENNE TRIBE

DECLARATION OF CANDIDACY FOR OFFICE OF TRIBAL PRESIDENT

(To be filed with the Tribal Secretary by 4:30 p.m. on _____ (date))

I, _____ (print name), hereby declare and certify as follows:

1. I intend to run for the office of President of the Northern Cheyenne Tribe in the Tribal primary election to be held on _____ (date), and, if I qualify for it, in the Tribal general election to be held on _____ (date), or any rescheduling of either election. I request that my name be listed as a candidate for that office on the official ballot for the primary election and, if I qualify for the general election, on the official ballot for the general election.

2. I possess all qualifications for the office of Tribal President, which I understand to be the following:

- I am an enrolled member by blood of the Northern Cheyenne Tribe.
- I will be at least 30 years of age on the date of the general election.
- From the date one year before the date set for the primary election through the date on which the general election is held, I will have a residence on the Northern Cheyenne Reservation in which I customarily and actually reside. If elected, I will continue to have such a residence throughout my term of office.

3. I pay herewith in full the non-refundable filing fee of \$ _____ in the form of:

Mark One

certified or cashier's check []

money order []

Signature: _____ Date: _____
Candidate

Acknowledgement of Receipt

Receipt of this Declaration of Candidacy and the filing fee on the date and at the time written below is hereby acknowledged.

Signature: _____ Date: _____ Time: _____
Tribal Secretary

NORTHERN CHEYENNE TRIBE

DECLARATION OF CANDIDACY FOR OFFICE OF TRIBAL VICE PRESIDENT

(To be filed with the Tribal Secretary by 4:30 p.m. on _____ (date))

I, _____ (print name), hereby declare and certify as follows:

1. I intend to run for the office of Vice President of the Northern Cheyenne Tribe in the Tribal primary election to be held on _____ (date), and, if I qualify for it, in the Tribal general election to be held _____ (date), or any rescheduling of either election. I request that my name be listed as a candidate for that office on the official ballot for the primary election and, if I qualify for the general election, on the official ballot for the general election.

2. I possess all qualifications for the office of Tribal Vice President, which I understand to be the following:

- I am an enrolled member by blood of the Northern Cheyenne Tribe.
- I will be at least 30 years of age on the date of the general election.
- From the date one year before the date set for the primary election through the date on which the general election is held, I will have a residence on the Northern Cheyenne Reservation in which I customarily and actually reside. If elected, I will continue to have such a residence throughout my term of office.

3. I pay herewith in full the non-refundable filing fee of \$ _____ in the form of:

Mark One

certified or cashier's check []

money order []

Signature: _____ Date: _____
Candidate

Acknowledgement of Receipt

Receipt of this Declaration of Candidacy and the filing fee on the date and at the time written below is hereby acknowledged.

Signature: _____ Date: _____ Time: _____
Tribal Secretary

Exhibit F

NORTHERN CHEYENNE TRIBE

DECLARATION OF CANDIDACY
FOR TRIAL JUDGE OF THE TRIBAL COURT

(To be filed with the Tribal Secretary by 4:30 p.m. on _____ (date))

I, _____ (print name), hereby declare and certify as follows:

1. I intend to run for the position of Trial Judge of the Northern Cheyenne Tribal Court in the Tribal primary election to be held on _____ (date), and, if I qualify for it, in the Tribal general election to be held on _____ (date), or any rescheduling of either election. I request that my name be listed as a candidate for that position on the official ballot for the primary election and, if I qualify for the general election, on the official ballot for the general election.

2. I possess all qualifications for the position of Trial Judge, which I understand to be the following:

- I am an enrolled member of the Tribe.
- I will be at least 30 years of age on the date of the general election.
- I am a high school graduate or hold a G.E.D. certificate or its equivalent.
- Through the date of the general election, I will have never been convicted of a felony in any tribal, federal or state court, whether after a plea of guilty or nolo contendere, a trial or other procedure (the foregoing does not include convictions, if any, which have been vacated).
- During the 10-year period preceding the date set for the primary election through the date on which the general election is held, I was not and will not be convicted of a misdemeanor involving moral turpitude in any tribal, federal or state court, whether after a plea of guilty or nolo contendere, a trial or other procedure (the foregoing does not include convictions, if any, which have been vacated).
- During the three-year period preceding the date set for the primary election through the date on which the general election is held, I was not and will not be removed as a Trial Judge or Appellate Judge of the Tribal Court on a complaint for removal.
- If elected, I will have a residence on the Northern Cheyenne Reservation in which I will customarily and actually reside throughout my term of office.
- At the time of filing of this Declaration of Candidacy, I was not a plaintiff or defendant in any civil or criminal action pending in the Tribal Court.
- I am familiar with the Tribal Constitution, the Tribal Law & Order Code, civil and criminal procedures, the Indian Civil Rights Act, the Indian Child Welfare Act, and federal Indian law

generally.

- I am able and competent to: conduct efficient and organized Trial Court proceedings; research and apply applicable law; timely decide or otherwise resolve disputes; and set forth clear and reasoned decisions and orders in writing.
- I am able to deal effectively with people in highly emotional, adversarial and confrontational situations.
- 3. I understand that, if elected as Trial Judge, the Tribal President, with the concurrence of the Tribal Council, may designate me as the Chief Trial Judge. I hereby agree that, if so designated, I will serve as Chief Trial Judge, subject to the continuing authority of the Tribal President, with the concurrence of the Tribal Council, to designate another sitting Trial Judge as the Chief Trial Judge.
- 4. I understand that the salary for Trial Judge will be \$ _____, payable _____, through the term of office, provided that the Trial Judge who is designated as the Chief Trial Judge will receive an enhanced salary of \$ _____, payable _____, for so long as that person holds the position of Chief Trial Judge. The foregoing compensation shall be subject to reduction as permitted by the Separation of Powers Ordinance.
- 5. I pay herewith in full the non-refundable filing fee of \$ _____ in the form of:

Mark One

certified or cashier's check []

money order []

Signature: _____ Date: _____
Candidate

Acknowledgement of Receipt

Receipt of this Declaration of Candidacy and the filing fee on the date and at the time written below is hereby acknowledged.

Signature: _____ Date: _____
Tribal Secretary

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elec\dl\fl\dn

NORTHERN CHEYENNE TRIBE

DECLARATION OF CANDIDACY FOR TRIBAL COUNCIL SEAT, _____ DISTRICT

(To be filed with the Tribal Secretary by 4:30 p.m. on _____ (date))

I, _____ (print name), hereby declare and certify as follows:

1. I intend to run for a seat on the Northern Cheyenne Tribal Council from the _____ District in the Tribal primary election to be held on _____ (date), and, if I qualify for it, in the Tribal general election to be held on _____ (date), or any rescheduling of either election. I request that my name be listed as a candidate for that seat on the official ballot for the primary election and, if I qualify for the general election, on the official ballot for the general election.

2. I possess all qualifications for a seat on the Tribal Council, which I understand to be the following:

- I am an enrolled member of the Tribe.
- I will be at least 21 years of age on the date of the general election.
- From the date six months before the date set for the primary election through the date on which the general election is held, I will have a residence in the _____ District in which I customarily and actually reside. If elected, I will continue to have such a residence throughout my term of office.

3. I pay herewith in full the non-refundable filing fee of \$ _____ in the form of:

Mark One

certified or cashier's check []

money order []

Signature: _____
Candidate

Date: _____

Acknowledgement of Receipt

Receipt of this Declaration of Candidacy and the filing fee on the date and at the time written below is hereby acknowledged.

Signature: _____
Tribal Secretary

Date: _____

Time: _____

NORTHERN CHEYENNE TRIBE

NOTICE SOLICITING CANDIDATES FOR TRIBAL ELECTIONS

(To be posted at 3 public places within each District
60 days before date of primary elections.)

NOTICE IS HEREBY GIVEN AS FOLLOWS:

1. **Primary Election.** On _____ (date), a Tribal primary election will be held for the positions listed in paragraph 5 below. The purpose of the primary is to select final candidates for each of the listed positions. The primary election will be followed by a Tribal general election to be held on _____ (date).
2. **Candidate Filing Deadline.** If you wish to have your name placed on the primary ballot as a candidate for one of the listed positions, you must file a signed Declaration of Candidacy with, and pay a filing fee to, the Tribal Secretary no later than 4:30 p.m. on _____ (date). The Declaration of Candidacy form is available from the Tribal Secretary. You may file for one position only.
3. **Filing Fee.** The filing fee is \$ _____ for President, \$ _____ for Vice President, \$ _____ for Trial Judge, and \$ _____ for a Tribal Council seat. All filing fees are non-refundable.
4. **Qualifying for General Election.** If you are qualified to run as provided in paragraph 6 below, and you properly file a Declaration of Candidacy and pay the filing fee, you will be listed on the primary ballot as a candidate for the position specified in your Declaration of Candidacy. If you are successful in the primary, or if no primary is held (in circumstances permitted by the Tribal Election Ordinance), you will be listed as a candidate for that position on the official ballot for the general election.
5. **Open Positions.** The forthcoming primary and general elections will be for the following positions:
 - President
 - Vice President
 - Trial Judge of the Tribal Court -- _____ open seat(s)
 - Tribal Council, Ashland District -- _____ open seat(s)
 - Tribal Council, Birney District -- _____ open seat(s)
 - Tribal Council, Busby District -- _____ open seat(s)
 - Tribal Council, Lame Deer District -- _____ open seat(s)
 - Tribal Council, Muddy District -- _____ open seat(s)

6. **Candidate Qualifications.** In addition to properly filing a Declaration of Candidacy and paying the filing fee, candidates must have the following minimum qualifications:

President: Enrolled Northern Cheyenne by blood; 30 years old; customarily and actually resides on Reservation from date one year before date set for primary election through date of general election. If elected continue to so reside through term of office.

Vice President: Enrolled Northern Cheyenne by blood; 30 years old; customarily and actually resides on the Reservation from date one year before date set for primary election through date of general election. If elected continue to so reside through term of office.

Trial Judge: Enrolled Northern Cheyenne; 30 years old; will customarily and actually reside on the Reservation throughout term of office; high school graduate or hold G.E.D. certificate or its equivalent; never convicted of a felony; not convicted of a misdemeanor involving moral turpitude during past 10 years; not removed as a Trial Judge or Appellate Judge during past three years; will customarily and actually reside on the Reservation through term of office; not a party to an action pending in Tribal Court; familiar with Tribal Constitution, Law & Order Code, civil and criminal procedures, Indian Civil Rights Act, Indian Child Welfare Act, and federal Indian law generally; able to conduct Trial Court Proceedings, research and apply law, make timely decisions, set forth decisions in writing; able to deal with people in highly adversarial situations.

Tribal Council Seat: Enrolled Northern Cheyenne; 21 years old; customarily and actually resides in District to which seat is allocated from date six months before date set for primary election through date of general election. If elected, continue to so reside through term of office.

7. **Candidates Solicited.** Qualified members of the Northern Cheyenne Tribe are hereby solicited as candidates

NORTHERN CHEYENNE TRIBE

By: _____ Date: _____
Tribal Secretary

NOTE TO PREPARER OF THIS NOTICE

In the case of a primary election which precedes a special election to fill a vacancy, section 9.a of the Tribal Election Ordinance gives the Tribal Council discretion to allow the public posting of this Notice at a date later than 60 days before the date of the primary, or to entirely dispense with this Notice, in order to enable compliance with the requirement that a general election to fill a vacancy must occur no later than 90 days after the occurrence of the vacancy.

NORTHERN CHEYENNE TRIBE

NOTICE OF TRIBAL PRIMARY ELECTION

(To be posted at 3 public places in each District 21 days before the primary election)

NOTICE IS HEREBY GIVEN AS FOLLOWS:

1. Primary Election. On _____ (date), a Tribal primary election will be held in all Districts of the Northern Cheyenne Reservation for the positions listed in paragraph 5 below.

2. Time and Place to Vote. The polls in all Districts will be open from _____ a.m. to _____ p.m., and will be located as follows:

Ashland
(location of polling place)

Birney
(location of polling place)

Busby
(location of polling place)

Lame Deer
(location of polling place)

Muddy
(location of polling place)

3. Who May Vote. All Tribal members aged 18 or older on the day of the primary election, who properly register on the day of the primary election at his/her District polling place, or who properly apply for and obtain an absentee ballot, will be entitled to vote in the primary.

4. Positions on Which Voter May Vote. In the primary election each voter may vote for Tribal President, Tribal Vice President, Tribal Judge(s), and any open Tribal Council Seat(s) in the voter's District.

5. Open Positions, Declared Candidates, Write-In Voting. The purpose of the primary election is to select final candidates for each of the positions listed below, from among those qualified Tribal members who properly filed a Declaration of Candidacy and paid the filing fee. Those persons are listed (in alphabetical order for each position) below. Write-in voting is also permitted:

Tribal President

Tribal Vice President

Trial Judge of Tribal Court -- ___ open seat(s)

Ashland District -- ___ open Tribal Council Seat(s)

Birney District -- ___ open Tribal Council Seat(s)

Busby District -- ___ open Tribal Council Seat(s)

Lame Deer District -- ___ open Tribal Council Seat(s)

Muddy District -- ___ open Tribal Council Seat(s)

NORTHERN CHEYENNE TRIBE

By: _____
Tribal Secretary

Date: _____

NOTE TO PREPARER OF THIS FORM

This form must be appropriately adjusted in the case of the following elections:

- *Those regular elections (in 1998 and every four years thereafter) where the positions of President, Vice President and Trial Judge are not open.*
- *Those regular elections where the Tribal Council seat in a one-seat District will not be open.*
- *Special elections to fill a vacancy in a particular position.*

NORTHERN CHEYENNE TRIBE

NOTICE OF TRIBAL GENERAL ELECTION

*(To be posted at 3 public places in each District
21 days before the general election.)*

NOTICE IS HEREBY GIVEN AS FOLLOWS:

1. **General Election.** On _____ (date), a Reservation-wide Tribal general election will be held for the positions listed in paragraph 5 below.

2. **Time and Place to Vote.** The polls in all Districts will be open from _____ a.m. to _____ p.m., and will be located as follows:

Ashland
(location of polling place)

Birney
(location of polling place)

Busby
(location of polling place)

Lame Deer
(location of polling place)

Muddy
(location of polling place)

3. **Who May Vote.** All Tribal members aged 18 or older on the day of the general election, who properly register on the day of the election at his/her District polling place, or who properly apply for and obtain an absentee ballot, will be entitled to vote in the general election.

4. **Positions on Which Voter May Vote.** In the general election, each voter may vote on each position listed below, including all open Tribal Council seats in all Districts.

5. **Open Positions, Final Candidates.** The purpose of the general election is to elect a person to each of the positions listed below, from among the final candidates listed *(in alphabetical order for each position)* below. *(State whether write-in voting is permitted. Typically, there is no write-in voting in a general election. But, in limited circumstances -- see Note 2 below -- write-in voting is permitted.)*

Tribal President

Tribal Vice President

Trial Judge of the Tribal Court – ___ open seat(s)

Ashland District – ___ open Tribal Council Seat(s)

Birney District – ___ open Tribal Council Seat(s)

Busby District – ___ open Tribal Council Seat(s)

Lame Deer District -- ___ open Tribal Council Seat(s)

Muddy District -- ___ open Tribal Council Seat(s)

NORTHERN CHEYENNE TRIBE

By: _____
Tribal Secretary

Date: _____

NOTES TO PREPARER OF THIS FORM

Note 1. This form must be appropriately adjusted in the case of the following elections:

- *Those regular elections (in 1998 and every four years thereafter) where the positions of President, Vice President and Trial Judge are not open.*
- *Those regular elections where the Tribal Council seat in a one-seat District is not open.*
- *Special elections to fill a vacancy in a particular position.*

Note 2. Write-in voting is permitted for the following positions:

- *Positions as to which there was no primary election.*
- *The positions of President or Vice President, if a primary election was held for that position but -- because of the subsequent death, withdrawal or disqualification of one or more successful primary candidate -- there remains only one candidate for that position.*
- *Tribal Council seat(s) from a District or Trial Judge seat(s), if a primary election was held for such seat(s), but -- because of the subsequent death, withdrawal or disqualification of one or more successful primary candidates -- the remaining number of named candidates for such seat(s) is less than twice the number of such open seat(s) .*

NORTHERN CHEYENNE TRIBE

No. _____

VOTER REGISTRATION CERTIFICATE -- TRIBAL PRIMARY ELECTION

(To be filed on day of primary election at polling place in voter's District)

I, _____ (print name), hereby declare and certify as follows:

1. I submit this Certificate to register to vote and obtain a ballot at the Tribal primary election to be held on _____ (date).

2. I am entitled to vote in the primary election since I am an enrolled member of the Northern Cheyenne Tribe and 18 years of age or older on the date of the primary election.

3. The _____ District is the District in which I must vote, as determined by the Northern Cheyenne Voters Committee.

Signature or Mark: _____
Voter

Date: _____

Two witnesses to mark:

Date: _____

Date: _____

(Primary ballot will be physically attached to this Certificate. Upon the signing and filing of this Certificate, ballot will be detached and provided to voter.)

NORTHERN CHEYENNE TRIBE

No. _____

VOTER REGISTRATION CERTIFICATE -- TRIBAL GENERAL ELECTION

(To be filed on day of general election at polling place in voter's District)

I, _____ (print name), hereby declare and certify as follows:

1. I submit this Certificate to register to vote and obtain a ballot at the Tribal general election to be held on _____ (date).

2. I am entitled to vote in the general election since I am an enrolled member of the Northern Cheyenne Tribe and 18 years of age or older on the date of the general election.

3. The _____ District is the District in which I must vote, as determined by the Northern Cheyenne Voters Committee.

Signature or Mark: _____
Voter

Date: _____

Two witnesses to mark:

_____ Date: _____

_____ Date: _____

(General election ballot will be physically attached to this Certificate. Upon the signing and filing of this Certificate, ballot will be detached and provided to voter.)

..... []
..... []
..... []
(write-in candidate)

(Provide one write-in space for each open seat.)

TRIBAL COUNCIL -- _____ DISTRICT: Vote for _____ *(fill in number of open Council seats in this District).*

..... []
..... []
..... []
..... []
..... []
(write-in candidate)

(Provide one write-in space for each open seat.)

NOTES TO PREPARER OF THIS FORM

Note 1. The primary election for President, Vice President and Trial Judge(s) will be conducted at-large, while the primary election for open Tribal Council seats in a District will be confined to the District. Accordingly, the ballot in each District will enable voting on the President, Vice President, Trial Judge(s) and the open Tribal Council seat(s) in that District.

Note 2. This ballot form must be appropriately adjusted in the case of the following elections:

- *Those regular elections (in 1998 and every four years thereafter), where the positions of President, Vice President and Trial Judge will not be open and on the ballot.*
- *Any regular election in which there are no open Council seats in the particular District.*
- *Special elections to fill a vacancy in a particular position.*

Note 3. The ballot may also set forth propositions, questions, or other matters to be voted on by the Tribal membership in the primary election.

NORTHERN CHEYENNE TRIBE

OFFICIAL BALLOT -- _____ DISTRICT

TRIBAL GENERAL ELECTION

(date)

This is a Tribal reservation-wide general election for the positions listed below. You may vote for each position, including all open Tribal Council seats in all Districts. For each position, you may vote for a candidate listed below by making a mark in the box opposite that candidate's name. Write-in voting is not permitted (*but see Note 2 below*).

TRIBAL PRESIDENT: Vote for one.

..... []

..... []

TRIBAL VICE PRESIDENT: Vote for one.

..... []

..... []

TRIBAL JUDGE OF THE TRIBAL COURT: Vote for _____ (*fill in number of open positions*).

..... []

..... []

..... []

..... []

TRIBAL COUNCIL -- ASHLAND DISTRICT: Vote for _____ (*fill in number of open Council seats*).

..... []

..... []

..... []

..... []

TRIBAL COUNCIL -- BIRNEY DISTRICT: Vote for _____ (*fill in number of open Council seats*).

..... []

..... []

..... []
 []
 []
 []

TRIBAL COUNCIL -- LAME DEER DISTRICT: Vote for _____ (fill in number of open Council seats).

..... []
 []
 []
 []
 []
 []
 []
 []
 []

TRIBAL COUNCIL -- MUDDY DISTRICT: Vote for _____ (fill in number of open Council seats).

..... []
 []
 []
 []

NOTES TO PREPARER OF THIS FORM

Note 1. This ballot form must be appropriately adjusted in the case of the following elections:

- *Those regular elections (in 1998 and every four years thereafter) where the positions of President, Vice President and Trial Judge will not be open and on the ballot.*
- *Any regular election in which there are no open Council seats in a particular District(s).*
- *Special elections to fill a vacancy in a particular position.*

Note 2. It will be necessary to add write-in spaces for the following positions:

- *Positions as to which there was no primary election.*
- *The positions of President or Vice President, if a primary election was held for that position but -- because of the subsequent death, withdrawal or disqualification of one or more successful primary*

- *Tribal Council seat(s) from a District, or Trial Judge seat(s), if a primary election was held for such seat(s), but -- because of the subsequent death, withdrawal or disqualification of one or more successful primary candidates -- the remaining number of named candidates for such seat(s) is less than twice the number of such open seat(s) .*

Note 3. The ballot may also set forth any proposition, question, or other matter to be voted on by the membership in the election.

Exhibit O

*This will serve as an application for an absentee ballot for a primary election.
It must be physically received in the Tribal Secretary's office
before the day of the primary election.*

Secretary
Northern Cheyenne Tribe
P.O. Box 128
Lame Deer, MT 59043

Dear Secretary:

I hereby request an absentee ballot for the Tribal primary election to be held on _____ (date), or any rescheduling thereof.

I hereby certify that I expect that, on the day of the election (or any rescheduling thereof):

Set forth one or more of the following grounds:

- *I will not be physically present on the Reservation.*
- *I will be too ill to vote in-person.*
- *I will be physically incapable of voting.*

I am an enrolled member of the Northern Cheyenne Tribe who will be 18 years of age or older on the day of the primary election. I am listed in the _____ District Voters List. My mailing address is:

Set forth voter's mailing address.

Thank you,

Signature of Applicant

On this _____ day of _____, 19____, _____ (name of applicant) personally appeared before me, whose identity I verified on the basis of _____ (basis for identification), who acknowledged that he/she signed the application.

NOTARY PUBLIC, STATE OF _____
RESIDING AT _____
MY COMMISSION EXPIRES: _____

Exhibit P

*This will serve as an application for an absentee ballot for a general election.
It must be physically received in the Tribal Secretary's office
before the day of the general election.*

Secretary
Northern Cheyenne Tribe
P.O. Box 128
Lame Deer, MT 59043

Dear Secretary:

I hereby request an absentee ballot for the Tribal general election to be held on _____ (date), or any rescheduling thereof.

I hereby certify that I expect that, on the day of the election (or any rescheduling thereof):

Set forth one or more of the following grounds:

- *I will not be physically present on the Reservation.*
- *I will be too ill to vote in-person.*
- *I will be physically incapable of voting.*

I am an enrolled member of the Northern Cheyenne Tribe who will be 18 years of age or older on the day of the general election. I am listed in the _____ District Voters List. My mailing address is:

Set forth voter's mailing address.

Thank you,

Signature of Applicant

On this _____ day of _____, 19____, _____ (name of applicant) personally appeared before me, whose identity I verified on the basis of _____ (basis for identification), who acknowledged that he/she signed the application.

NOTARY PUBLIC, STATE OF _____,
RESIDING AT _____
MY COMMISSION EXPIRES: _____

NORTHERN CHEYENNE TRIBE

CERTIFICATE OF DISTRICT ELECTION
RESULTS -- TRIBAL PRIMARY ELECTION

_____ DISTRICT

The undersigned, comprising at least a majority of the Election Board for the _____ District, hereby declare and certify as follows:

1. Results in District. We have canvassed and counted all ballots, including absentee ballots, cast by qualified voters of the above District in the Tribal primary election held on _____ (date), and have determined that the following candidates received the following total number of votes from the voters of the District:

	<u>Candidate</u>	<u>Votes</u>
President	_____	_____
	_____	_____
	_____	_____
	_____	_____
Vice President	_____	_____
	_____	_____
	_____	_____
	_____	_____
Trial Judge of the Tribal Court	_____	_____
	_____	_____
	_____	_____
	_____	_____
Tribal Council - _____ District	_____	_____
	_____	_____
	_____	_____
	_____	_____

2. Final Candidates for District Council Seat(s). Based on the above results, the following persons shall be final candidates for the ____ (number) open Tribal Council seat(s) in the _____ District in the forthcoming general election:

ELECTION BOARD FOR THE _____ DISTRICT (majority must sign)

Signature: _____ Date: _____
Election Judge

Signature: _____ Date: _____
Election Clerk

NORTHERN CHEYENNE TRIBE

CERTIFICATE OF DISTRICT ELECTION
RESULTS -- TRIBAL GENERAL ELECTION

_____ DISTRICT

The undersigned, comprising at least a majority of the Election Board for the _____ District, hereby declare and certify as follows:

Results in District. We have canvassed and counted all ballots, including absentee ballots, cast by qualified voters of the above District in the Tribal general election held on _____ (date), and have determined that the following candidates received the following total number of votes from the voters of the District:

	<u>Candidate</u>	<u>Votes</u>
President	_____	_____
	_____	_____
Vice President	_____	_____
	_____	_____
Trial Judge of the Tribal Court	_____	_____
	_____	_____
	_____	_____
	_____	_____
Tribal Council - Ashland District	_____	_____
	_____	_____
	_____	_____
	_____	_____
Tribal Council - Birney District	_____	_____
	_____	_____
Tribal Council - Busby District	_____	_____

Tribal Council - Lame Deer
District

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Tribal Council - Muddy District

_____	_____
_____	_____
_____	_____
_____	_____

ELECTION BOARD FOR THE _____ DISTRICT (*majority must sign*)

Signature: _____ Date: _____
Election Judge

Signature: _____ Date: _____
Election Clerk

Exhibit T

NORTHERN CHEYENNE TRIBE

CERTIFICATE OF RESERVATION-WIDE
ELECTION RESULTS - TRIBAL PRIMARY ELECTION

The undersigned, comprising at least a majority of the Reservatoin-Wide Election Board, hereby declare and certify as follows:

1. Results Reservaton-Wide. All ballots, including absentee ballots, cast by the qualified voters of the Tribe in the Tribal primary election held on _____ (date) have been canvassed and counted. The Reservation-Wide Election Board has determined that the following candidates for President, Vice President and Trial Judge each received the following total number of votes from all voters in all Districts, and that the following candidates for open Tribal Council seats in a District each received the following total number of votes from the voters of that District:

	<u>Candidate</u>	<u>Votes</u>
President	_____	_____
	_____	_____
	_____	_____
	_____	_____
Vice President	_____	_____
	_____	_____
	_____	_____
	_____	_____
Trial Judge of the Tribal Court	_____	_____
	_____	_____
	_____	_____
	_____	_____
	_____	_____
Tribal Council - Ashland District	_____	_____
	_____	_____
	_____	_____
	_____	_____
	_____	_____
Tribal Council - Birney District	_____	_____

Birney District -- _____ open Tribal Council Seat(s)

Busby District -- _____ open Tribal Council Seat(s)

Lame Deer District -- _____ open Tribal Council Seat(s)

Muddy District -- _____ open Tribal Council Seat(s)

RESERVATION-WIDE ELECTION BOARD (majority must sign)

Signature: _____ Date: _____
Election Judge - Ashland

Signature: _____ Date: _____
Election Judge - Birney

Signature: _____ Date: _____
Election Judge - Busby

Signature: _____ Date: _____
Election Judge - Lame Deer

Signature: _____ Date: _____
Election Judge - Muddy

NORTHERN CHEYENNE TRIBE

CERTIFICATE OF RESERVATION-WIDE ELECTION
RESULTS -- TRIBAL GENERAL ELECTION

The undersigned, comprising at least a majority of the Reservation-Wide Election Board, hereby declare and certify as follows:

1. **Results Reservation-Wide.** All ballots, including absentee ballots, cast by qualified voters of the Tribe in the Tribal general election held on _____ (date) have been canvassed and counted. The Reservation-Wide Election Board has determined that the following candidates each received the following total number of votes from all voters in all Districts:

	<u>Candidate</u>	<u>Votes</u>
President	_____	_____
	_____	_____
Vice President	_____	_____
	_____	_____
Trial Judge of the Tribal Court	_____	_____
	_____	_____
	_____	_____
	_____	_____
Tribal Council - Ashland District	_____	_____
	_____	_____
	_____	_____
	_____	_____
Tribal Council - Birney District	_____	_____
	_____	_____
Tribal Council - Busby District	_____	_____
	_____	_____
	_____	_____
	_____	_____
Tribal Council - Lame Deer District	_____	_____
	_____	_____

Tribal Council - Muddy
District

2. **Winners.** Accordingly, the following persons have been elected to the following positions:

Tribal President

Tribal Vice President

Tribal Judge

**Tribal Council seat,
Ashland District**

**Tribal Council seat,
Birney District**

**Tribal Council seat,
Busby District**

**Tribal Council seat,
Lame Deer District**

**Tribal Council seat,
Muddy District**

RESERVATION-WIDE ELECTION BOARD (*majority must sign*)

Signature: _____

Election Judge - Ashland

Date: _____

Signature: _____

Election Judge - Birney

Date: _____

Signature: _____

Election Judge - Busby

Date: _____

Signature: _____

Election Judge - Lame Deer

Date: _____

Signature: _____

Election Judge - Muddy

Date: _____

NORTHERN CHEYENNE TRIBE

CERTIFICATE OF SPOILED BALLOTS -- TRIBAL PRIMARY ELECTION

_____ District

The undersigned, comprising at least a majority of the Election Board for the _____ District, hereby declare and certify as follows:

In canvassing all ballots, including absentee ballots, cast by the qualified voters of the above District in the Tribal primary election held on _____ (date), we determined that _____ (number) ballot(s) should not be counted in whole or in part. We attach hereto:

- The original of each ballot not counted in its entirety.
- A copy of each ballot which is partially defective or improper, with our notation indicating which vote(s) made on the ballot have not been counted.

ELECTION BOARD FOR THE _____ DISTRICT (majority must sign)

Signature: _____
Election Judge

Date: _____

Signature: _____
Election Clerk

Date: _____

NORTHERN CHEYENNE TRIBE

CERTIFICATE OF SPOILED BALLOTS -- TRIBAL GENERAL ELECTION

_____ District

The undersigned, comprising at least a majority of the Election Board for the _____ District, hereby declare and certify as follows:

In canvassing all ballots, including absentee ballots, cast by the qualified voters of the above District in the Tribal general election held on _____ (date), we determined that _____ (number) ballot(s) should not be counted in whole or in part. We attach hereto:

- The original of each ballot not counted in its entirety.
- A copy of each ballot which is partially defective or improper, with our notation indicating which vote(s) made on the ballot have not been counted.

ELECTION BOARD FOR THE _____ DISTRICT (majority must sign)

Signature: _____
Election Judge

Date: _____

Signature: _____
Election Clerk

Date: _____

Exhibit X

NORTHERN CHEYENNE TRIBE

NOTICE OF CANCELLATION OF CANDIDACY

(To be filed with Tribal Secretary prior to forthcoming primary or general election)

I, _____, hereby declare and certify as follows:
(print name)

1. I have decided to cancel my candidacy for the position of _____ in the forthcoming Tribal election. I request that my name not be listed as a candidate for that position on the next ballot, whether it be the primary or general election ballot. If my name is already listed on such next ballot, it should be stricken or deemed stricken from the ballot as a listed or a write-in candidate for that position.

2. I understand that, upon the filing of this Notice with the Tribal Secretary, it shall be revocable and I will not be entitled to a refund of any portion of the filing fee I paid to run for that position.

Signature: _____ Date: _____
Candidate

Acknowledgement of Receipt

Receipt of this Notice of Cancellation of Candidacy on the date written below is hereby acknowledged.

Signature: _____ Date: _____
Tribal Secretary

Exhibit Q

*To be included in the absentee ballot package
sent to each person requesting an absentee ballot.*

Dear Applicant for an Absentee Ballot:

In response to your application, I enclose a ballot for use in the Northern Cheyenne Tribal
_____ (indicate primary or general) election set for _____ (date).

I also enclose a return envelope addressed to me.

After executing the ballot, you should place it in the return envelope and seal the envelope.
Do not write a return address or other information which could identify you on the return envelope,
since if such identifying information is provided the ballot will not be counted.

You may cast the enclosed ballot either by:

- Delivering it (in the sealed envelope) by hand (in person) or by mail to my office no later than 4:30 p.m. of the day of the election. I will then arrange for the timely deposit of the ballot in the ballot box in your District. If you wait until the day of the election to deliver it to my office, you run the risk that there will be insufficient time to get your ballot into the District ballot box before the polls close.
- Alternatively, you may personally deposit the enclosed ballot in the ballot box at your District polling place on the day of the election, before the polls close.

If the absentee ballot is lost in the mail or is otherwise lost before it is cast, you will not be able to vote in this election.

Please feel free to call if you have any questions.

Very truly yours,

NORTHERN CHEYENNE TRIBE

By _____
Tribal Secretary

Summary of the meeting

So P 001-001(98)

NORTHERN CHEYENNE TRIBE

**REVISED TRIBAL ELECTION ORDINANCE
(As Amended)**

ORD 2(98)

Final

TABLE OF CONTENTS

TION	PAGE
Section 1. DEFINITIONS	1
a. "Ordinance"	1
b. "Section," "subsection" and "paragraph"	1
c. "All elections"	1
d. "Regular election"	1
e. "Special election"	1
f. "General election"	1
g. "Primary election"	1
h. "Qualified voter"	2
i. "District Voters List"	2
j. "Voter Registration Certificate"	2
k. "Tribal Council seats allocated among the Districts"	2
l. "Five Additional Council Seats"	2
m. "Membership List"	2
n. "Declaration of Candidacy"	2
o. "Voters Committee"	2
p. "District Election Board"	2
q. "Reservation-Wide Election Board"	2
r. "Certificate of District Election Results"	2
s. "Certificate of Reservation-Wide Election Results"	3
t. Tribal Secretary"	3
Section 2. COMPOSITION OF TRIBAL COUNCIL	3
a. Vice President's Seat	3
b. Five Seats -- Allocated One Per District	3
c. Five Additional Seats Allocated Among Districts	3
d. Election Process	3
e. Terms of Office	3
Section 3. ALLOCATION FORMULA FOR THE FIVE ADDITIONAL TRIBAL COUNCIL SEATS	3
a. Membership List	3
1. Voters Committee Meetings and Source Materials	4
2. Association With District	4
3. Finalization Date	4
b. Allocation of Five Additional Council Seats	4
1. District Figures	4
2. Step One Allocations	5

3.	Step Two Allocations	5
4.	Sample Allocations	5
5.	Certificate	5
c.	Finality	5
Section 4.	PRESIDENT, VICE PRESIDENT AND TRIAL JUDGES	5
Section 5.	QUALIFICATIONS FOR OFFICE.	6
a.	Tribal Council	6
b.	President and Vice President	6
c.	Trial Judges	6
d.	Definition of "Domicile."	7
Section 6.	RESERVATION DISTRICTS	7
Section 7.	ELECTION OF PRESIDENT, VICE PRESIDENT AND TRIAL JUDGES	7
a.	Declaration of Candidacy; Filing Fee	8
b.	Review of Candidate Qualifications by Voters Committee	8
c.	Primary	8
d.	No Primary	9
e.	Regular Election	9
f.	First Election for Trial Judges	9
g.	Winners	9
Section 8.	ELECTION OF TRIBAL COUNCIL	10
a.	Declaration of Candidacy; Filing Fee	10
b.	Review of Candidate Qualifications by Voters Committee	10
c.	Primary	10
d.	No Primary	10
e.	Regular Election of 1996	10
f.	Regular Election of 1998 and Thereafter	11
g.	Winners	11
Section 9.	ELECTION NOTICES	11
a.	Notice Soliciting Candidates	11
b.	Notice of Election	11
Section 10.	VOTERS AND VOTERS LISTS	11
a.	Qualified Voters	11
b.	District Voters Lists	12
1.	Voters Committee Meetings and Source Materials	12
2.	Voting District	12

3.	Posting and Refinement of District Voting Lists	12
Section 11.	REGISTRATION AT POLLS	13
Section 12.	BALLOTS	13
Section 13.	CASTING THE BALLOT	13
a.	Assistance from District Election Board	13
b.	Voting on Candidates	13
c.	Voting on Propositions	14
d.	Deposit in Ballot Box	14
Section 14.	BALLOT BOXES	14
Section 15.	ABSENTEE VOTING	14
a.	Grounds	14
b.	Application	14
c.	Voter Registration Certificate	14
1.	In-Person Applications	14
2.	Mail Applications	15
3.	Delivery of Registration Certificates to District Election Board	15
d.	Absentee Ballot Package	15
e.	Casting the Absentee Ballot	15
1.	Deliver to Secretary and Secretary Deposits in Ballot Box	15
2.	In-Person Voting	15
3.	No Other Method	16
Section 16.	CANVASS AND COUNTING OF BALLOTS; CERTIFICATION OF RESULTS; STORAGE OF ELECTION DOCUMENTS; SWEARING-IN	16
a.	Close Polls; District Count; District Certificates; Bring to Tribal Secretary.	16
b.	Reservation-Wide Count; Reservation-Wide Certificates.	16
c.	Spoiled Ballots	16
d.	Storage of Election Documents	17
1.	Tribal Secretary	17
2.	BIA Superintendent	17
e.	Swearing to Office	17
Section 17.	ELECTION BOARDS	17
a.	Appointment of Election Judges and Clerks	17
b.	Oath of Office	18
c.	District Election Board	18

- Exhibit O Application for Absentee Ballot -- Tribal General Election
- Exhibit P Application for Absentee Ballot -- Tribal Primary Election
- Exhibit Q Instruction Letter to Absentee Voter
- Exhibit R Certificate of District Election Results -- Tribal Primary Election
- Exhibit S Certificate of District Election Results -- Tribal General Election
- Exhibit T Certificate of Reservation-Wide Election Results -- Tribal Primary Election
- Exhibit U Certificate of Reservation-Wide Election Results -- Tribal General Election
- Exhibit V Certificate of Spoiled Ballots -- Tribal Primary Election
- Exhibit W Certificate of Spoiled Ballots -- Tribal General Election
- Exhibit X Notice of Cancellation of Candidacy

e.	Relief	26
f.	Trial and Appeal	26
g.	Continued Service in Office	26
h.	Strict Compliance	27
Section 23.	VIOLATIONS	27
a.	Election Fraud	27
b.	Solicitation at Polls	27
Section 24.	AMENDMENT OR REPEAL.	27

FORMS

Exhibit A	Map of Reservation Districts
Exhibit B	Hypothetical Examples of Allocation of the Five Additional Council Seats Under Section 3 of this Ordinance
Exhibit C	Certificate of Council Seat Allocation for Tribal Regular Election of _____
Exhibit D	Declaration of Candidacy for Office of Tribal President
Exhibit E	Declaration of Candidacy for Office of Tribal Vice President
Exhibit F	Declaration of Candidacy for Trial Judge of the Tribal Court
Exhibit G	Declaration of Candidacy for Tribal Council Seat, _____ District
Exhibit H	Notice Soliciting Candidates for Tribal Elections
Exhibit I	Notice of Tribal Primary Election
Exhibit J	Notice of Tribal General Election
Exhibit K	Voter Registration Certificate -- Tribal Primary Election
Exhibit L	Voter Registration Certificate -- Tribal General Election
Exhibit M	Official Ballot -- _____ District, Tribal Primary Election
Exhibit N	Official Ballot -- _____ District, Tribal General Election

d.	Conduct of Election in District	18
e.	Reservation-Wide Election Board	19
f.	Fees and Expenses	19
Section 18. MISCELLANEOUS ELECTION RULES		20
a.	Run for One Position	20
b.	Withdrawal Before Election	20
c.	Hold One Office; Officials and Employees May Run	20
d.	Resolving Ties	20
e.	If Winning Candidate Cannot Be Sworn-In	20
f.	Serve Until Successor Sworn In	20
Section 19. FILLING VACANCIES IN OFFICE		21
a.	President, Vice President or Trial Judge	21
b.	Tribal Council	21
c.	Election to Fill Vacancy	21
Section 20. VOTERS COMMITTEE		21
a.	Structure	21
	1. Number and Appointment	21
	2. Qualifications	22
	3. Term	22
	4. Removal and Replacement	22
	5. Chairperson and Vice-Chairperson, and Secretary	22
b.	Powers and Duties of Voters Committee	22
c.	Voters Committee Operations	23
	1. Quorum and Voting	23
	2. Recusal	23
	3. Chairperson	23
	4. Vice-Chairperson	23
	5. Secretary	23
	6. Meetings; Removal for Non-Attendance	23
	7. Committee Members' Fees and Expenses	24
	8. Books and Records	24
Section 21. APPLICABILITY TO OTHER MEMBERSHIP VOTES		24
Section 22. ELECTION CONTESTS AND RECOUNTS		25
a.	Applicable to All Elections	25
b.	Initiation; Defendants	25
c.	Plaintiff	26
d.	Grounds	26

Section 1. DEFINITIONS. When used in this Ordinance, the following terms shall have the following meanings:

- a. The term "**Ordinance**" means this Revised Tribal Election Ordinance, including any amendments hereof.
- b. The terms "**section**," "**subsection**" and "**paragraph**" mean respectively a section, subsection, and paragraph of this Ordinance.
- c. The term "**all elections**" means any and all Tribal elections for President, Vice President, Trial Judge(s) of the Tribal Court, or a Tribal Council seat(s), whether a primary or general election, and whether held in connection with a regular or special election.
- d. The term "**regular election**" means:
- the Tribal general election for President, Vice President, and all ten Tribal Council seats, held on November 5, 1996; and the Tribal general election for President, Vice President, all Trial Judges of the Tribal Court, and five Tribal Council seats, held on the date set for regular Congressional elections every four years thereafter;
 - the Tribal general election for five Tribal Council seats held on the date set for regular Congressional elections in 1998 and on the date set for regular Congressional elections every four years thereafter; and
 - the Tribal primary election preceding each of the above general elections.
- e. The term "**special election**" means:
- a Tribal general election to fill a vacancy in the office of President, Vice President, Trial Judge of the Tribal Court, or a Tribal Council seat, arising from a cause other than the expiration of the term of office (such as death, resignation, removal, or similar cause); and
 - the Tribal primary election preceding such general election.
- f. The term "**general election**" means any Tribal election for President, Vice President, Trial Judge(s) of the Tribal Court, and/or a Tribal Council seat(s), among the final candidates who have been chosen in a preceding primary election, or who have become final candidates without a primary in those circumstances where no primary is required under this Ordinance.
- g. The term "**primary election**" means any Tribal election to select the final candidates for President, Vice President, Trial Judge(s) of the Tribal Court, and/or a Tribal Council seat(s) to run in a general election.

h. The term "qualified voter" means an enrolled member of the Tribe qualified to vote in a Tribal election (whether a primary or general election, or a regular or special election), because he or she is 18 years of age or older on the date of the particular election.

i. The term "District Voters List" means the list of qualified voters in a Reservation District prepared by the Voters Committee in preparation for any Tribal election, as provided in section 10.b.

j. The term "Voter Registration Certificate" means the document a qualified voter must file at his/her District polling place in order to secure a ballot as provided in section 11 and, in the case of an absentee voter, must deliver to the Tribal Secretary to secure an absentee ballot as provided in section 15.c.

k. The term "Tribal Council seats allocated among the Districts" means the 10 Tribal Council seats distributed to the Reservation Districts, including the five seats allocated one per District and the Five Additional Council Seats, as described in section 2.b and .c.

l. The term "Five Additional Council Seats" means the five Tribal Council seats allocated among the Reservation Districts in accordance with the percentage of the Tribal membership associated with each District, as provided in sections 2.c and 3.

m. The term "Membership List" means the list of the entire Tribal membership showing the District with which each member is associated, prepared by the Voters Committee in preparation for the regular election of 1996 and subsequently in preparation for each regular election held every four years thereafter, for use in allocating the Five Additional Council Seats among the Reservation Districts as provided in section 3.

n. The term "Declaration of Candidacy" means the document which, along with any applicable filing fee, must be filed with the Tribal Secretary in order to run for President, Vice President or Tribal Judge (as provided in section 7.a) or a Tribal Council seat (as provided in section 8.a).

o. The term "Voters Committee" means the standing committee of the Tribe appointed and functioning as provided in section 20.

p. The term "District Election Board" means the board consisting of the Election Judge and Election Clerks of a Reservation District, appointed and functioning as provided in sections 17.a - .d.

q. The term "Reservation-Wide Election Board" means the board consisting of the five Election Judges from the Reservation Districts, functioning as provided in section 17.e.

r. The term "Certificate of District Election Results" means the document executed

y the District Election Board to certify election results in the District, as provided in section 16.a.

s. The term "Certificate of Reservation-Wide Election Results" means the document executed by the Reservation-Wide Election Board to certify the Reservation-wide election results, as provided in section 16.b.

t. The term "Tribal Secretary" means the Tribal Secretary or, in his/her absence, a staff person in the office of the Tribal Secretary who has been designated in writing by the Tribal Secretary to perform specific ministerial functions assigned to the Tribal Secretary by any provision of this Ordinance.

Section 2. COMPOSITION OF TRIBAL COUNCIL. The Tribal Council shall consist of eleven members holding the following seats:

a. **Vice President's Seat.** One at-large seat held by the Vice President except when the Vice President is presiding over the Tribal Council due to the absence of the President.

b. **Five Seats -- Allocated One Per District.** Five seats allocated one each to the Reservation Districts of Ashland, Birney, Busby, Lane Deer, and Muddy.

c. **Five Additional Seats Allocated Among Districts.** Five seats allocated among the five Reservation Districts ("Five Additional Council Seats") in accordance with the percentage of the Tribal membership associated with each District. The allocation of these five seats shall be determined for the regular election of 1996, and redetermined for the regular election held every four years thereafter. Such allocations shall be made as provided in section 3.

d. **Election Process.** The members of the Tribal Council holding the ten seats allocated among the Reservation Districts shall be selected through District primary elections followed by a general election conducted at-large, as provided in section 8. The Vice President holding the at-large seat shall be selected through a primary election followed by a general election, both conducted at-large as provided in section 7.

e. **Terms of Office.** The members of the Tribal Council holding the ten seats allocated among the Reservation Districts shall serve for four years in staggered terms, provided that in the regular election of 1996 five members of the Tribal Council shall be selected for two-year terms as set forth in section 8.e.

Section 3. ALLOCATION FORMULA FOR THE FIVE ADDITIONAL TRIBAL COUNCIL SEATS. The Five Additional Council Seats to be allocated among the five Reservation Districts under section 2.c shall be allocated as follows:

a. **Membership List.** In preparation for the regular election of 1996, and thereafter in preparation for each regular election every four years thereafter, the Voters Committee shall prepare

a list of the entire Tribal membership ("Membership List") which lists the member's name and the district with which such member is associated. The Membership List shall be prepared in accordance with the following standards and procedures:

1. **Voters Committee Meetings and Source Materials.** In order to prepare the Membership List, the Voters Committee shall meet as frequently as the Committee deems necessary. Minutes of all meetings shall be kept. In preparing the Membership List, the Voters Committee may use such Tribal, BIA, historical, anecdotal, and other material, information and resources, and may hear from or consult such persons, as the Committee considers appropriate.

2. **Association With District.** For purposes of the Membership List, the Reservation District with which each Tribal member is associated shall be determined as follows:

- A Tribal member who customarily and actually resides in one Reservation District during the entire 90-day period preceding the date on which the Membership List is finalized (as described in paragraph 3 below), shall be deemed associated with that District.
- A Tribal member -- whether resident on or off the Reservation -- who has not customarily and actually resided in one Reservation District during the 90-day period preceding the date on which the Membership List is finalized, shall be considered associated with the Reservation District which, in the judgment of the Voters Committee, is the District of the member's most representative customary and actual residence or, failing such a residence, the District in which the member's family roots lie.

3. **Finalization Date.** For the regular election of 1996, by July 19, 1996 the Voters Committee shall finalize the Membership List, and the allocation of the Five Additional Council Seats under subsection b below. For the regular election of 2000 and the regular election every four years thereafter, these matters shall be finalized on or about 90 days before the date set for the primary election. The Voters Committee shall have authority, in connection with such 1996 and quadrennial elections only, to review, reconsider or adjust such determinations if it will not unduly disrupt such forthcoming regular elections.

b. **Allocation of Five Additional Council Seats.** Contemporaneous with the finalization of the Membership List, the Voters Committee shall determine the allocation of the Five Additional Council Seats among the five Reservation Districts as provided in this subsection b:

1. **District Figures.** For each Reservation District the Voters Committee shall count the total number of Tribal members listed on the Membership List as associated with the District. Using these figures, the Voters Committee shall calculate the percentage of the Tribal membership associated with each District ("District Percentage"). Each District Percentage shall then be multiplied by five (the product is referred to hereinafter as the "District Product"), and on

he basis of all District Products, the Five Additional Council Seats shall be allocated among the five Districts in two steps as provided in paragraphs 2 and 3 below.

2. **Step One Allocations.** First, each Reservation District with a District Product of 1.0 or greater shall be allocated that number of the Five Additional Council Seats which equals the whole number portion of the District Product. For example: a District with a District Product of 1.3, shall receive a step one allocation of one out of the Five Additional Council Seats; and a District with a District Product of 2.7 shall receive a step one allocation of two out of the Five Additional Council Seats.

3. **Step Two Allocations.** After making the whole number allocations in step one, the unallocated balance of the Five Additional Council Seats shall be allocated among the Reservation Districts in descending order of the fractional portions of the District Products. For example, if three of the Five Additional Council Seats have been allocated in step one, and the fractional portions of the District Products for the five Districts are .65, .45, .43, .31 and .16, the two unallocated seats from the Five Additional Council Seats would be allocated to the Districts having the two highest fractional portions -- .65 and .45. In the event the fractional portion of the District Product is the same for two or more Districts, the tie (should it need to be resolved) would be resolved by the drawing of lots by the Voters Committee.

4. **Sample Allocations.** To further illustrate the above allocation principles, three hypothetical examples are shown in the attached Exhibit B.

5. **Certificate.** Upon determining the step one and step two allocations, the Voters Committee shall prepare and sign a Certificate of Council Seat Allocation substantially in the form attached hereto as Exhibit C. The original Certificate of Council Seat Allocation shall be delivered to the Tribal Secretary, who shall retain such original and promptly provide copies thereof to the President, Vice President, and each member of the Tribal Council and post copies thereof at three public places in each Reservation District.

c. **Finality.** The finalized Membership List and allocation of the Five Additional Council Seats determined by the Voters Committee in 1996 and for each quadrennial regular election thereafter, shall be final and not subject to review by any court or other body except on the ground of (a) gross irregularity through the disregard of readily available and clearly reliable information in the preparation of the Membership List, or (b) clear arithmetic error, (c) which caused a clearly erroneous allocation of the Five Additional Council Seats.

Section 4. PRESIDENT, VICE PRESIDENT AND TRIAL JUDGES. The President, Vice President and Trial Judges of the Tribal Court shall each be selected through a primary election followed by a general election, both conducted at-large as provided in section 7. The President, Vice President and Trial Judges shall each serve for four-year terms, provided that the first set of Trial Judges will be elected in approximately late 1997 as provided in section 7.f and therefore will serve a three-year term approximately.

Section 5. QUALIFICATIONS FOR OFFICE.

a. Tribal Council. To run as a listed or (where permitted) write-in candidate for a Tribal Council seat allocated to a District, one must be:

- an enrolled member of the Tribe;
- at least 21 years of age; and
- domiciled within that District from the date six months before the date set for the primary election through the date on which the general election is held.

If elected, one must remain domiciled in the District throughout the term of office, and failure to do so shall be ground for removal from office in accordance with applicable Tribal removal procedures.

b. President and Vice President. To run as a listed or (where permitted) write-in candidate for President or Vice President, one must be:

- an enrolled member by blood of the Tribe;
- at least 30 years of age on the date of the general election; and
- domiciled on the Reservation from the date one year before the date set for the primary election through the date on which the general election is held.

If elected, one must remain domiciled on the Reservation throughout the term of office, and failure to do so shall be ground for removal from office in accordance with applicable Tribal removal procedures.

c. Trial Judges. To run as a listed or (where permitted) write-in candidate for Trial Judge of the Tribal Court, one must have the following qualifications (as set forth in Chapter 8 of the Separation of Powers Ordinance):

- enrolled member of the Tribe;
- at least 30 years of age on the date of the general election;
- high school graduate or the holder of a G.E.D. certificate or its equivalent;
- never been convicted of a felony in any Tribal, federal or state court, whether after a plea of guilty or nolo contendere, a trial or other procedure (the foregoing shall not include convictions which have been vacated);

- within the 10-year period preceding the date set for the primary election through the date on which the general election is held, not been convicted of a misdemeanor involving moral turpitude in any tribal, federal or state court, whether after a plea of guilty or nolo contendere, a trial or other procedure (the foregoing shall not include convictions which have been vacated);
- within the three-year period preceding the date set for the primary election through the date on which the general election is held, not been removed as a Trial Judge or Appellate Judge of the Tribal Court on a complaint for removal;
- will maintain his or her domicile on the Reservation throughout the term of office;
- at the time of filing the Declaration of Candidacy, is not a plaintiff or defendant in any civil or criminal action pending in the Tribal Court;
- familiar with the Tribal Constitution, the Tribal Law & Order Code, civil and criminal procedures, the Indian Civil Rights Act, the Indian Child Welfare Act, and federal Indian law generally;
- able and competent to: conduct efficient and organized Trial Court proceedings; research and apply applicable law; timely decide or otherwise resolve disputes; and set forth clear and reasoned decisions and orders in writing; and
- able to deal effectively with people in highly emotional, adversarial and confrontational situations.

If elected, failure to maintain certain of the foregoing qualifications throughout the term of office may be ground for automatic removal specified in section 17.2 of the Separation of Powers Ordinance.

d. **Definition of "Domicile."** When used in this section 5, the term "domicile" means the residence in which a person customarily and actually resides during the applicable time period.

Section 6. RESERVATION DISTRICTS. The five Reservation Districts shall be the districts of Ashland, Birney, Busby, Lame Deer and Muddy. The current boundaries of these Districts are shown on the map attached hereto as Exhibit A. As provided in Article III, Section 2(d) of the Tribal Constitution and Bylaws, the Tribal Council shall retain power to change the boundaries of the Districts, provided that such a change which is made after the Voters Committee, in connection with a forthcoming scheduled election, has finalized the Membership List or District Voters Lists under sections 3.a or 10.b, shall not be effective until after the holding of the general election.

Section 7. ELECTION OF PRESIDENT, VICE PRESIDENT AND TRIAL JUDGES. Candidates for President, Vice President, and Trial Judge of the Tribal Court shall be determined,

and the President, Vice President and all Trial Judges shall be elected in at-large general elections, as follows:

a. **Declaration of Candidacy; Filing Fee.** At least 30 days before the date set for the primary election under subsection c below, a person desiring to run for President, Vice President or Trial Judge shall in person file with the Tribal Secretary a Declaration of Candidacy which certifies the intent to run for the office and the possession of all qualifications for the office, and shall simultaneously pay to the Tribal Secretary a non-refundable \$200 filing fee by cashier's or certified check or money order. The Tribal Secretary shall in writing acknowledge receipt (including the date and time of receipt) of each properly filed Declaration of Candidacy and accompanying filing fee on the filed Declaration of Candidacy, retain the original thereof, and provide a copy to the candidate. The Declaration of Candidacy for the office of President shall be substantially in the form attached hereto as Exhibit D. The Declaration of Candidacy for the office of Vice President shall be substantially in the form attached hereto as Exhibit E. The Declaration of Candidacy for the office of Trial Judge shall be substantially in the form attached hereto as Exhibit F. For each regular election for President, Vice President or Trial Judge after the 1996 election, the Tribal Council may adjust the filing fee to account for inflation or other factors. Any person qualifying for a general election for President, Vice President or Trial Judge by write-in vote in a primary election shall promptly file a Declaration of Candidacy and pay the filing fee.

b. **Review of Candidate Qualifications by Voters Committee.** In timely and expeditious fashion, the Voters Committee shall review all filed Declarations of Candidacy to determine if there is reason to believe that the candidate does not possess the qualifications for office specified in section 5. In reviewing the qualifications of a candidate for Trial Judge, the Voters Committee shall carefully consider the President's written certification that the candidate is qualified required by section 8.1 of the Separation of Powers Ordinance. If the Voters Committee determines that such qualifications appear to be lacking, or that additional information is needed relevant to the candidate's qualifications, the Voters Committee shall in writing so advise the candidate and accord the candidate a reasonable and timely opportunity to present relevant information in person and/or in writing, in which case the candidate shall be obliged to present such information. If the Voters Committee thereafter determines that the candidate does not possess the requisite qualifications for office, it shall set forth that determination and the grounds therefor⁹ in writing, immediately provide copies thereof to the candidate and the Tribal Secretary, and thereafter the Declaration of Candidacy shall be considered void and the candidacy terminated. [In all elections, a person claiming that a candidate does not possess the qualifications for office set forth in section 5 shall be obliged to make all reasonable efforts to present the claim to the Voters Committee for disposition (as provided above) as promptly as possible prior to the forthcoming primary or general election.] In making determinations hereunder, the Voters Committee may rely on such data and information as it considers reasonably relevant and reliable. All such determinations shall be reflected in Voters Committee minutes.

c. **Primary.** If more than two qualified persons file to run for President or for Vice President, or if the number of qualified persons filing to run for Trial Judge is more than twice the

number of open Trial Judge seats, there shall be a primary election among such persons conducted at large. The primary shall be held on a date set by the Council which shall be at least 30 days before the general election. Write-in voting shall be permitted in the primary. The two top vote-getters in the primary for President and the two top vote-getters in the primary for Vice President shall be the only candidates for President and Vice President, respectively, in the general election, provided that if more than two persons tie for top vote-getter, or if there is one top vote-getter and a tie for second place, all such persons shall be the candidates. In descending order of votes received, the top vote-getters in the primary for Trial Judge shall be included in the general election as the only candidates for Trial Judge until the number of such included candidates equals twice the number of open Trial Judge positions, provided that if there is a tie for lowest vote-getter among such persons, the tied persons shall also be included among the candidates. Write-in voting shall not be permitted in such general election. If a candidate dies, withdraws or is disqualified prior to the general election, the candidates shall be redetermined on the basis of the primary results without considering votes cast for the former candidate, provided that if this yields less than two candidates, write-in voting shall be permitted in such general election.

d. **No Primary.** If no more than two qualified persons file to run for President or for Vice President, or if the number of qualified persons filing to run for Trial Judge is no more than twice the number of open Trial Judge seats, there shall be no primary election for such office. The person(s) who filed for such office shall be the only candidate(s) for such office in the general election. Write-in voting shall be permitted in such general election.

e. **Regular Election.** On Tuesday, November 5, 1996, and on the date set for regular Congressional elections every four years thereafter, there shall be regular elections for President, Vice President, and all Trial Judges, and each winning candidate shall be elected for a four-year term, provided that, the foregoing notwithstanding, the first election for Trial Judges shall be held as provided in subsection f below.

f. **First Election for Trial Judges.** The first primary and general election for all Trial Judges is projected to be held in approximately late 1997, after the Tribal Council adopts a Separation of Powers Ordinance. The Trial Judges elected in that election shall serve until the regular election in the year 2000. The Tribal Council may elect to hold this first primary and general election contemporaneous with and on the same schedule as the primary and general election to fill the current vacancy in a Lame Deer District Tribal Council seat created by the resignation of James Crazymule, notwithstanding any contrary provision of this Ordinance regarding election schedules.

g. **Winners.** In every regular and special election for President, Vice President and/or Trial Judge, the top vote-getter among the candidates for President and the top vote-getter among the candidates for Vice President shall be considered elected as President and Vice President, respectively; and the top vote-getter(s) among the candidates for open Trial Judge seat(s) shall, in descending order of votes received, be considered elected to such seat(s) until the open seat(s) has thereby been filled.

Section 8. ELECTION OF TRIBAL COUNCIL. Candidates for the ten Tribal Council seats allocated among the Reservation Districts shall be determined, and the Council members shall be elected in at-large general elections, as follows:

a. Declaration of Candidacy; Filing Fee. At least 30 days before the date set for the primary election under subsection c below, a person desiring to run for a Tribal Council seat allocated to a District shall in person file with the Tribal Secretary a Declaration of Candidacy substantially in the form attached hereto as Exhibit G, which certifies the intent to run and the possession of all qualifications for the office, and shall simultaneously pay to the Tribal Secretary a non-refundable \$50 filing fee by cashier's or certified check or money order. The Tribal Secretary shall in writing acknowledge receipt (including the date and time of receipt) of each properly filed Declaration of Candidacy and accompanying filing fee on the filed Declaration of Candidacy, retain the original thereof, and provide a copy to the candidate. For each regular election for the Tribal Council after the 1996 election, the Tribal Council may adjust the filing fee to account for inflation or other factors. Any person qualifying for a general election for the Tribal Council by write-in vote in a primary election shall promptly file a Declaration of Candidacy and pay the filing fee.

b. Review of Candidate Qualifications by Voters Committee. The Voters Committee shall review all filed Declarations of Candidacy as provided in section 7.b.

c. Primary. If the number of qualified persons filing to run for the Tribal Council from a District is more than twice the number of open Council seats allocated to the District, there shall be a primary election among such persons conducted within the District. The primary shall be held on a date set by the Tribal Council which shall be at least 30 days before the general election. Only the voters of the District may vote in the primary. Write-in voting shall be permitted in the primary. In descending order of votes received, the top vote-getters in the District primary shall be included in the general election as the only candidates for the open seat(s) in the District, until the number of such included candidates equals twice the number of such open seat(s); provided that if there is a tie for lowest vote-getter among such persons, the tied persons shall also be included among the candidates. Write-in voting shall not be permitted in such general election. If a candidate dies, withdraws or is disqualified prior to the general election, the candidates for the open seat(s) in the District shall be redetermined on the basis of the primary results without considering votes cast for the former candidate, provided that if this yields a number of candidates which is less than twice the number of such open seat(s), write-in voting shall be permitted in such general election.

d. No Primary. If the number of qualified persons filing to run for the Tribal Council from a District is no more than twice the number of open Council seats allocated to the District, there shall be no primary election for such seat(s). The person(s) who filed for such seat(s) shall be the only candidate(s) for such seat(s) in the general election. Write-in voting shall be permitted in such general election.

e. Regular Election of 1996. On Tuesday, November 5, 1996, there shall be a regular election to fill the ten Tribal Council seats allocated among the Districts. The top vote-getter among

the candidates for the seat(s) allocated to a District shall be considered elected to the seat allocated to the District under section 2.b and shall serve a four-year term. The other five successful Council candidates in that election shall be considered elected to the seats allocated under section 2.c and shall each serve a two-year term.

f. **Regular Election of 1998 and Thereafter.** On the date set for regular Congressional elections in 1998, and on the comparable date every two years thereafter, there shall be a regular election to fill five open Tribal Council seats, each for a four-year term.

g. **Winners.** In every regular and special election for Tribal Council, the top vote-getter(s) among the candidates for open Council seat(s) allocated to a District shall, in descending order of votes received, be considered elected to such seat(s) until the open seat(s) have thereby been filled.

Section 9. ELECTION NOTICES.

a. **Notice Soliciting Candidates.** At least 60 days before the date set for any primary election, the Tribal Secretary shall post at three public places in each Reservation District a Notice Soliciting Candidates which advises of the forthcoming primary and general elections and solicits the filing of Declarations of Candidacy. The Notice Soliciting Candidates shall be substantially in the form attached hereto as Exhibit H. In the case of a primary election which precedes a special election to fill a vacancy, the Tribal Council shall have discretion to shorten such 60-day period or dispense with the posting of such Notice Soliciting Candidates, in order to facilitate compliance with the requirement set forth in section 19.c (based on Article VII, Section 4(c) of the Tribal Constitution and Bylaws) that a general election to fill a vacancy must occur no later than 90 days after the occurrence of the vacancy.

b. **Notice of Election.** At least 21 days before the date set for any election, the Tribal Secretary shall post a Notice of Election, including a list of all persons running in the Election, at three public places in each Reservation District. For primary elections, the Notice of Election shall be substantially in the form attached hereto as Exhibit I. For general elections, the Notice of Election shall be substantially in the form attached hereto as Exhibit J.

Section 10. VOTERS AND VOTERS LISTS.

a. **Qualified Voters.** In all elections, all enrolled members of the Northern Cheyenne Tribe who will be 18 years of age or older on the date of the election shall be qualified to vote. In order to exercise his/her right to vote, a qualified voter must:

- register and cast a ballot at the polling place of his/her District, as provided in sections 11-13; or
- if qualified therefor, apply for and obtain an absentee ballot and cast that ballot, as

provided in section 15.

b. **District Voters Lists.** In preparation for all elections, for each Reservation District the Voters Committee shall prepare a list of all qualified voters in the District ("District Voters List"). The District Voters List will cover both the forthcoming primary and general elections. If a person will be less than 18 years old on the day of the primary election, but will reach the age of 18 by the day of the general election, he/she will not be eligible to vote in the primary election, but will be eligible to vote in the general election, and a notation to that effect shall be made opposite the person's name on the District Voters List. Each District Voters List shall be prepared in accordance with the following standards and procedures:

1. **Voters Committee Meetings and Source Materials.** In order to prepare each District Voters List, the Voters Committee shall meet as frequently as the Committee deems necessary. Minutes of all meetings shall be kept. In preparing the District Voters List, the Voters Committee may use such Tribal, BIA, historical, anecdotal, and other material, information, and resources, and may hear from or consult such persons, as the Committee considers appropriate.

2. **Voting District.** For purposes of the District Voters Lists, the Reservation District in which a Tribal member shall vote shall be determined as follows:

- A Tribal member who customarily and actually resides in one Reservation District during the entire 90-day period preceding the date set for the primary or general election (as the case may be) shall vote in that District.
- A Tribal member -- whether resident on or off the Reservation -- who has not customarily and actually resided in one Reservation District during the 90-day period preceding the date set for the particular election shall vote in the Reservation District which, in the judgment of the Voters Committee, is the District of the member's most representative customary and actual residence or, failing such a residence, the District in which the member's family roots lie.

3. **Posting and Refinement of District Voting Lists.** For the regular election of 1996, by July 26, 1996 the Voters Committee shall prepare the five District Voters Lists and post all five Lists in three public places in each Reservation District. For all other elections, the Voters Committee shall prepare and so post the District Voters Lists no later than 90 days before the date set for the primary election (provided that in the case of a special election to fill a vacancy, the Voters Committee shall shorten this 90-day period in order to facilitate compliance with the requirement set forth in section 17.c (based on Article VII, Section 4(c) of the Tribal Constitution and Bylaws) that a general election to fill a vacancy must occur no later than 90 days after the occurrence of the vacancy). After such initial posting of the District Voters Lists, through the holding of the primary and general elections, the Voters Committee shall review and, as appropriate, revise the District Voters Lists in light of any reasonably relevant and reliable data or information brought to its attention, including claims that any Tribal member should or should not be placed on

a District Voters List or should be transferred from one District Voters List to another. A person so claiming shall be obliged to make all reasonable efforts to present the claim to the Voters Committee for disposition prior to the forthcoming primary or general election, as the case may be. Each District Voters List, as finally determined by the Voters Committee, shall be final and not subject to review by any court or other body except on the ground of gross irregularity through the disregard of readily available and clearly reliable information in the preparation of the District Voters List, which caused the improper inclusion or exclusion of a qualified voter on or from a District Voters List, and which has, or in all likelihood could have, affected the results of the election. The determinations on all such claims shall be reflected in Voters Committee minutes. On a weekly basis, through the holding of the primary and general elections, the Voters Committee shall replace the five District Voters Lists posted in each District with the most current versions of such Lists.

Section 11. REGISTRATION AT POLLS. In all elections, to obtain a ballot a qualified voter shall register at the polling place in his/her District on the day of the election, unless the voter qualifies for and obtains an absentee ballot under section 15. To register at the District polling place, a voter must request, sign and file at the polling place a Voter Registration Certificate. For primary elections, the Voter Registration Certificate shall be substantially in the form attached hereto as Exhibit K. For general elections, the Voter Registration Certificate shall be substantially in the form attached hereto as Exhibit L. Each Voter Registration Certificate shall have a ballot attached to it. If the voter is unable to sign his/her name on the Voter Registration Certificate, the voter may instead make his/her mark or fingerprint on the Certificate in the presence of two witnesses. When the signed Voter Registration Certificate is filed, it shall be numbered in the upper right-hand corner and the ballot shall be detached and delivered to the voter.

Section 12. BALLOTS. In all elections, each qualified voter properly registering under section 11 shall be provided with a ballot which he/she may cast at the election. For primary elections, the ballot shall be substantially in the form attached hereto as Exhibit M. For general elections, the ballot shall be substantially in the form attached hereto as Exhibit N. All Elections shall be conducted by secret ballot and no ballot may be mutilated, marked or packaged in a manner which enables the identification of the person who cast the ballot.

Section 13. CASTING THE BALLOT. The following rules shall be observed in all elections:

a. **Assistance from District Election Board.** If two District Election Board members are satisfied that a qualified voter is unable to mark or cast the ballot because he/she cannot read or write or is otherwise physically disabled, they may assist such person in preparing and casting his/her ballot.

b. **Voting on Candidates.** Each voter shall vote by making an "X" or other clear mark on the ballot in the square adjoining the name of the candidate. If the voter indicates his/her vote on the ballot in some other clear way (e.g., by circling a candidate's name) that vote shall be given effect. If write-in voting is permitted, the voter may vote for a write-in candidate by writing the name of such candidate in the space provided on the ballot.

c. **Voting on Propositions.** If the ballot calls for a vote on a proposition, question or other matter, the voter shall vote thereon by making an "X" or other clear mark on the ballot in the square provided.

d. **Deposit in Ballot Box.** After marking the ballot, the voter shall place it in the ballot box.

Section 14. BALLOT BOXES. The Tribal Secretary shall be the custodian of all ballot boxes when not in use. In all elections, on the day of the election the Tribal Secretary shall arrange to have a ballot box delivered to each District polling place before the polls open, after placing in each District ballot box all absentee ballots received from voters of that District under section 15.

Section 15. ABSENTEE VOTING. In all elections, a qualified voter may vote by absentee ballot in the following circumstances, in accordance with the following procedures:

a. **Grounds.** A qualified voter may vote by absentee ballot if the voter expects that, on the day of the election, he/she:

- will not be physically present on the Reservation for any reason;
- will be too ill to vote in person; or
- will be physically incapable of voting in person.

b. **Application.** To obtain an absentee ballot, a voter must submit to the Tribal Secretary a notarized, written application in which the applicant certifies that he/she is entitled to an absentee ballot on one or more of the grounds described in subsection a above. For primary elections, the application shall be substantially in the form attached hereto as Exhibit O. For general elections, the application shall be substantially in the form attached hereto as Exhibit P. The submitted application must be physically received in the Tribal Secretary's office by 4:30 p.m. of the last business day before the day of the election, provided that applicants who intend to rely on the mails for submitting their application, receiving the absentee ballot package (described in subsection d below), and/or casting their absentee ballot shall be responsible for leaving adequate time for such steps to enable the casting of their absentee ballot on the day of the election.

c. **Voter Registration Certificate.** On receipt of a timely and proper application for absentee ballot, the applicant shall be provided with an absentee ballot after filing of a signed Voter Registration Certificate as provided below. The filed Voter Registration Certificate shall be numbered in the upper right-hand corner. The Voter Registration Certificate shall be in the form described in section 11.

1. **In-Person Applications.** If the applicant presents the application for absentee ballot in person, the applicant must also deliver to the Tribal Secretary a signed Voter Registration

Certificate for the election. Upon receipt of such a timely and proper Voter Registration Certificate from the applicant, the Tribal Secretary shall deliver an absentee ballot package to the applicant.

2. **Mail Applications.** If the applicant presents the application for absentee ballot by mail, upon receipt thereof the Tribal Secretary shall sign a Voter Registration Certificate for the election on behalf of the applicant and shall also sign the Certificate as Tribal Secretary. Thereafter, the Tribal Secretary promptly shall mail an absentee ballot package to the applicant using the mailing address specified in the application for absentee ballot.

3. **Delivery of Registration Certificates to District Election Board.** On the day of the election before the polls open, the Tribal Secretary shall deliver all such executed Voter Registration Certificates in a District to the District Election Board, in order to enable the Board to record on the District Voters List that absentee ballots have been provided to the persons named in the Voter Registration Certificates.

d. **Absentee Ballot Package.** The absentee ballot package shall consist of the following:

- The ballot detached from the applicant's Voter Registration Certificate. The ballot shall be in the form described in section 12.
- An envelope addressed to the Tribal Secretary and marked "Ballot -- _____ District" in the upper left-hand corner, for use in returning and casting the executed ballot as provided in subsection e below.
- A letter of instructions from the Tribal Secretary, substantially in the form attached hereto as Exhibit Q.

e. **Casting the Absentee Ballot.** An absentee ballot may be cast in either of the following two ways only:

1. **Deliver to Secretary and Secretary Deposits in Ballot Box.** The voter may return the absentee ballot, in the sealed return envelope, by mail or in-person hand-delivery to the Tribal Secretary's office no later than 4:30 p.m. of the day of the election. The Tribal Secretary shall deposit each such absentee ballot in the ballot box of the District noted on the absentee ballot envelope. If the absentee ballot is not received in the Tribal Secretary's office until the day of the election, the Tribal Secretary shall make best efforts to arrange for its deposit in the ballot box at the District polling place before the polls close, but cannot guarantee such deposit.

2. **In-Person Voting.** Alternatively, the absentee voter in-person may deposit the absentee ballot in the ballot box at the District polling place on the day of the election, before the polls close.

3. **No Other Method.** A person to whom an absentee ballot is mailed or delivered may vote only by casting of the absentee ballot as provided immediately above, and may not vote in the election by any other ballot or means. If a mailed absentee ballot is lost in the mails or is otherwise lost before it is cast, the applicant for the ballot will not be able to vote in the election.

* Section 16. **CANVASS AND COUNTING OF BALLOTS; CERTIFICATION OF RESULTS; STORAGE OF ELECTION DOCUMENTS; SWEARING-IN.** The following rules shall be observed in all elections:

a. **Close Polls; District Count; District Certificates; Bring to Tribal Secretary.** At the time fixed for the closing of the polls in a District, the District Election Board shall close the polls and cease registering voters and receiving cast ballots. Immediately thereafter, the District Election Board shall canvass the ballots and count all votes cast in its District for each candidate for each position, and on any proposition, question or other matter on the ballot. Upon completion of the count, the District Election Board shall prepare and sign a Certificate of District Election Results. For primary elections, the Certificate of District Election Results shall be substantially in the form attached hereto as Exhibit R. For general elections, the Certificate of District Election Results shall be substantially in the form attached hereto as Exhibit S. Upon execution of the Certificate of District Election Results, the District Election Judge immediately shall bring the Certificate, the District ballot box containing the cast ballots, and any Certificate of Spoiled Ballots executed under subsection c below, to the Tribal Secretary's office.

b. **Reservation-Wide Count; Reservation-Wide Certificates.** Upon reaching the Tribal Secretary's office, in a suitable place at the Tribal offices designated by the Tribal Secretary and in the presence of the Tribal Secretary, and based on the results reported on each Certificate of District Election Results, the Reservation-Wide Election Board immediately shall compile the Reservation-wide results of the election and prepare and sign a Certificate of Reservation-Wide Election Results (This shall be done even for a primary election in which the only open position(s) to be voted on in the election is an open Tribal Council seat(s) in one District). In no case may such Certificate be signed later than five days after the election. For primary elections, the Certificate of Reservation-Wide Election Results shall be substantially in the form attached hereto as Exhibit T. For general elections, the Certificate of Reservation-Wide Election Results shall be substantially in the form attached hereto as Exhibit U. The originals of each executed Certificate of District Election Results and Certificate of Reservation-Wide Election Results shall be delivered to the Tribal Secretary. The Tribal Secretary shall retain copies of such documents, promptly provide copies thereof to the President, Vice President, and each member of the Tribal Council, and arrange for the posting of a copy of the Certificate of Reservation-Wide Election Results in a public place in each Reservation District.

c. **Spoiled Ballots.** If the District Election Board determines that all or any portion(s) of any ballot should not be counted because of a defect or impropriety in the physical condition, form, execution or casting of the ballot, the District Election Board shall prepare and sign a Certificate of



Spoiled Ballots and attach thereto all original ballots which are spoiled in their entirety. If a defect or impropriety is determined not to invalidate all votes made on a ballot, the valid vote(s) shall be included in the vote count. In such case, the District Election Board shall make notation on the original ballot indicating which votes are invalid and shall attach a copy of the ballot so marked to the Certificate of Spoiled Ballots. For primary elections, the Certificate of Spoiled Ballots shall be substantially in the form attached hereto as Exhibit V. For general elections, the Certificate of Spoiled Ballots shall be substantially in the form attached hereto as Exhibit W.

d. Storage of Election Documents.

1. **Tribal Secretary.** In all elections, the originals of the following documents shall be retained by the Tribal Secretary: Notice Soliciting Candidates; Notice of Election; and Declarations of Candidacy. The Tribal Secretary shall serve as the permanent custodian of such documents, unless otherwise directed by a court of competent jurisdiction.

2. **BIA Superintendent.** In all elections, the originals of the following documents promptly shall be delivered to the Superintendent of the Bureau of Indian Affairs' Northern Cheyenne Agency: Voter Registration Certificates grouped by District; Applications for Absentee Ballot grouped by District; Ballots grouped by District; Certificates of Spoiled Ballots; Certificates of District Election Results; and Certificates of Reservation-Wide Election Results. The Agency Superintendent shall serve as the custodian of such documents through at least the end of the six-month period following the general election, unless otherwise directed by a court of competent jurisdiction.

e. **Swearing to Office.** At the first regular Tribal Council meeting occurring after the expiration of the seven-day period following the signing of the Certificate of Reservation-Wide Election Results for the general election, the successful candidates shall be sworn to the offices to which they have been elected. The swearing-in shall occur irrespective of the presence of a sufficient number of Tribal Council members theretofore in office to constitute a quorum. The following oath of office shall be administered by a Tribal Judge or Notary Public licensed in the State of Montana, as required by Article III, Section 2 of the Bylaws of the Tribe:

I, _____, do solemnly swear that I will support and defend the Constitution of the United States against all enemies; carry out faithfully and impartially the duties of my office to the best of my ability; promote and protect the best interests of my Tribe, the Northern Cheyenne, in accordance with the Constitution and Bylaws of the Tribe.

* **Section 17. ELECTION BOARDS.** In all elections, an Election Board for each Reservation District and a Reservation-Wide Election Board shall be appointed and function as follows:

a. **Appointment of Election Judges and Clerks.** No later than 30 days before the date

set for any primary election, the Tribal Council shall appoint an Election Judge and a set of Election Clerks for each Reservation District. The appointments may include alternates to serve if an appointee declines to serve. Each District shall have one Election Judge and at least the following number of Election Clerks:

<u>Total Council Seats Allocated to District</u>	<u>Min. No. of Election Clerks for District</u>
1	2
2	3
3	3
4 or more	4

The Tribal Secretary promptly shall give written notice of such appointment to each Election Judge and Election Clerk, as well as to any alternates. If an appointee and his/her alternates (if any) decline appointment or otherwise refuse to serve, the remaining Election Judge and Clerks in the District shall by majority vote appoint a replacement.

b. Oath of Office. No later than before the polls open in the District, the District Election Judge and Clerks shall assemble at the polling place and take the oath of office set forth in section 16.e, administrated by a Tribal Judge or Notary Public licensed in the State of Montana, as required by Article III, Section 2 of the Bylaws of the Tribe, provided that an Election Judge or Election Clerk who has taken the oath of office in connection with the primary election need not take the oath again in connection with the general election.

c. District Election Board. The Election Judge and Clerks for a District shall constitute the District Election Board. The District Election Judge shall be the Chairman of the District Election Board. The District Election Board shall appoint a Secretary from among the Board members. The District Election Board shall take action by majority vote of the Election Judge and Clerks.

*** d. Conduct of Election in District.** Within the District, the District Election Board shall administer and conduct the primary election (if one is to be conducted within the District) and the ensuing general election. The District Election Board shall:

- Arrange and open the polling place.
- Register qualified voters at the polling place in accordance with section 11, and receive from the Tribal Secretary and administer Voter Registration Certificates of absentee voters as provided in section 15.c.3.
- Provide ballots to registered voters at the polling place in accordance with section 12.

- Administer the casting of ballots at the polling place in accordance with section 13.
- Close the polling place, canvass the ballots cast, count the votes, and prepare and sign a Certificate of District Election Results in accordance with section 16.a.
- Determine whether any ballot cast is defective or improper, in whole or in part, and, if so, prepare and sign a Certificate of Spoiled Ballots in accordance with section 16.c.
- Ensure that the Election Judge immediately brings the District ballot box, Certificate of District Election Results, and any Certificate of Spoiled Ballots to the Tribal Secretary's offices in accordance with section 16.a.
- Take any other action necessary to properly administer and conduct the election in the District and to determine the results thereof.
- Perform any other duties and exercise any other rights which may be delegated to it by this Ordinance, any other enactment of the Tribal Council, or other applicable law.

e. Reservation-Wide Election Board. The five Election Judges for the Reservation Districts shall constitute the Reservation-Wide Election Board under Article III, Section 1 of the Bylaws of the Tribe. The Reservation-Wide Election Board shall take action by majority vote. The Reservation-Wide Election Board shall:

- Compile the Reservation-wide results of the election and prepare, sign and deliver the Certificate of Reservation-Wide Election Results, in accordance with section 16.b.
- Take any other action necessary to ascertain the Reservation-wide results of the election.
- Perform any other duties and exercise any other rights which may be delegated to it under this Ordinance, any other enactment of the Tribal Council, or other applicable law.

f. Fees and Expenses. At rates set by the Tribal Council in line with generally prevailing rates for service on Tribal commissions or boards, a fee shall be paid and out-of-pocket expenses shall be reimbursed to the Election Judges and Clerks for in-person participation in Election Board functions. Such fees and expenses shall not be paid, however, to any Election Judge or Clerk who is receiving compensation for the time spent or expense reimbursement as an employee of or contractor to the Tribe.

Section 18. MISCELLANEOUS ELECTION RULES. The following rules shall be observed in all elections:

a. **Run for One Position.** A person may not simultaneously file Declarations of Candidacy for more than one position. A person may not be listed as a candidate for more than one position in the primary or general elections. If a person (due in whole or part to write-in voting) qualifies as a candidate for more than one position in forthcoming general elections, such person promptly shall advise the Tribal Secretary as to the single position for which such person is to be listed as a candidate in such elections.

b. **Withdrawal Before Election.** A person who has qualified to run in a primary or general election may, at any time before such election is held, cancel his/her candidacy in such election by filing with the Tribal Secretary a Notice of Cancellation of Candidacy substantially in the form attached hereto as Exhibit X. Upon such filing, the Notice shall be irrevocable and such person's name shall not be listed or, if already listed, shall be stricken by the Tribal Secretary or District Election Boards, or shall be deemed stricken, as a candidate for such office in the forthcoming election. Any votes cast for a person so withdrawing in the forthcoming primary or general election, including write-in votes, shall be counted but shall not be effective. Such a person shall not be entitled to a refund of any portion of any filing fee paid in connection with his/her candidacy.

c. **Hold One Office; Officials and Employees May Run.** No person may simultaneously hold more than one elected office. While holding an elected office a person may run for a second office, provided that, if such person is elected, the first office shall become vacant when such person is sworn in to the second office. While employed or retained by the Tribe or an instrumentality of the Tribe a person may run for office, provided that, if elected, such person promptly shall resign from such employment or position and shall not be sworn into office until such resignation is effective.

d. **Resolving Ties.** In all elections other than primary elections, tie votes shall be resolved by a public drawing of lots by the Tribal Secretary.

e. **If Winning Candidate Cannot Be Sworn-In.** If a person who is elected to office in any regular or special election dies, withdraws or is disqualified before being sworn into the office, candidates for the office shall be redetermined and a general election shall be held in a manner which, in the judgment of the Tribal Council, is most appropriate under the circumstances and in light of the policies underlying section 7 or 8, as the case may be. The decision of the Tribal Council shall be final and not subject to judicial review in any court.

f. **Serve Until Successor Sworn In.** A person elected as President, Vice President, Trial Judge of the Tribal Court, or Tribal Council member shall be elected for the term of office specified in this Ordinance and until his/her successor is sworn into office.

Section 19. FILLING VACANCIES IN OFFICE. If the office of President, Vice President, Trial Judge of the Tribal Court, or a seat on the Tribal Council allocated to a Reservation District, becomes vacant due to death, resignation, removal, or other cause, the Tribal Council shall schedule a special election to fill the vacancy for the remainder of the term of office as follows:

a. **President, Vice President or Trial Judge.** In the case of a vacancy in the office of President, Vice President, or Trial Judge, candidates for office shall be determined as provided in sections 7.a - .d and a special election shall be held as provided in subsection c below, provided that the Tribal Council may determine not to hold an election as permitted by subsection c below. If the office of President is vacant, the Vice President shall serve as acting President until the next President is elected and sworn into office. If the offices of both President and Vice President are vacant simultaneously, the Tribal Council shall appoint from within its own number an acting President who shall serve until the next President is elected and sworn into office. While the Vice President or appointed Tribal Council member serves as acting President, such person's seat on the Tribal Council shall be considered temporarily vacant, and upon completion of such service such person shall resume occupancy of the seat.

b. **Tribal Council.** In the case of a vacancy in one of the ten seats on the Tribal Council allocated among the Districts, candidates shall be determined as provided in sections 8.a - .d and a special election shall be held as provided in subsection c below, provided that the Tribal Council may determine not to hold an election as permitted by subsection c below.

c. **Election to Fill Vacancy.** A general election to fill a vacancy shall occur no later than 90 days after the occurrence of the vacancy, provided that, if the vacancy in office occurs when there is less than 180 days remaining in the term of the office, the Tribal Council in its discretion may choose not to hold the election. The decision of the Tribal Council shall be final and not subject to judicial review in any court. If the Tribal Council so chooses not to hold an election as to a vacancy in a Tribal Council seat allocated to a District or a vacancy in a Trial Judge seat, the Council promptly shall publicly solicit the filing of Declarations of Candidacy by qualified persons desiring to be appointed to the seat for the remainder of its term. No filing fee shall be required. Promptly after the close of such filing period, by majority vote the Tribal Council shall make such appointment from among all qualified persons filing a Declaration of Candidacy.

Section 20. VOTERS COMMITTEE. The Tribal Council hereby establishes a standing Tribal governmental committee to be known as the Voters Committee.

a. **Structure.**

1. **Number and Appointment.** The Voters Committee shall consist of five Committee Members. Each Committee member shall be appointed by the President with the concurrence of the Tribal Council. The appointments may include alternates to serve if an appointee declines to serve.

2. Qualifications. Each Committee member will be a member of the Tribe, at least 25 years old, and a resident of the Reservation. There shall be one Committee member from each of the five Reservation Districts. Each Committee member shall be a person of integrity, committed to the best interests of the Tribe, and capable through background, experience and knowledge of the Tribal membership and the Reservation to competently perform the duties of a Committee member. Neither the President, Vice President, Secretary, Treasurer, a Trial Judge of the Tribal Court, nor any member of the Tribal Council, may serve as a Committee member. A Committee member who desires to be a candidate for the Tribal Council, President, Vice President, or Trial Judge in a forthcoming primary or general election, must immediately resign from the Voters Committee.

3. Term. All Committee members shall serve for four-year, staggered terms, and until their successors are appointed. However, to establish the staggered terms, upon enactment of this Ordinance, the President with the concurrence of the Tribal Council shall make the following appointments to the Voters Committee: a person from Ashland and a person from Birney shall be appointed to serve as Committee members through the regular Tribal election of 1998 and until their successors are appointed; and a person from Busby, Lame Deer and Muddy shall be appointed to serve as Committee members through the regular Tribal election of 2000 and until his/her successor is appointed. After the regular Tribal election of 1998 and after the regular election every four years thereafter, Voters Committee seats from Ashland and Birney shall be declared open and two persons shall be appointed to those seats. After the regular Tribal election of 2000 and after the regular election every four years thereafter, the Voters Committee seats from Busby, Lame Deer and Muddy shall be declared open and three persons shall be appointed to those seats.

4. Removal and Replacement. A Committee member may be suspended or removed at any time, without a hearing, by concurrence of the President and two-thirds of the full Tribal Council, for any reason they deem sufficient in their discretion. The joint decision of the President and Tribal Council to suspend or remove shall be final and not subject to review in any court. If a seat on the Voters Committee becomes vacant due to removal, resignation, death, or any other reason, a replacement shall be appointed for the remainder of the replaced person's term.

5. Chairperson and Vice-Chairperson, and Secretary. From among the Committee members, the Voters Committee shall designate a Chairperson, Vice-Chairperson, and Secretary of the Committee, each of whom shall serve at the pleasure of the Committee.

b. Powers and Duties of Voters Committee. The Voters Committee shall have the following powers and duties:

- Prepare Membership Lists as provided in section 3.a.
- Determine the allocation of the Five Additional Council Seats as provided in section 3.b.
- Review all filed Declarations of Candidacy as provided in sections 7.b and 8.b.

- Prepare District Voters Lists as provided in section 10.b.
- Work cooperatively with the Tribal Secretary and the Tribal Council in planning, scheduling and implementing all elections.
- Perform any other duties and exercise any other rights which may be delegated to it by this Ordinance, any other enactment of the Tribal Council, or other applicable law.
- Take any other action necessary to properly perform its duties.

c. Voters Committee Operations.

1. Quorum and Voting. Four Committee members shall constitute a quorum. The Chairperson may vote and shall preside over all meetings. ~~Action by the Voters Committee shall be by affirmative vote of three Committee members.~~

2. Recusal. A Committee member may voluntarily recuse himself/herself and decline to participate in any Voters Committee action or decision when the Committee members believes he/she could not act fairly or without bias, or that there would be an appearance that he/she could not so act.

3. Chairperson. Subject to the supervisory authority and direction of the Voters Committee, the Chairperson shall serve as the principal spokesperson for the Voters Committee and shall chair Voters Committee meetings. The Chairperson shall have such other powers and duties as may be set forth in this Ordinance or other applicable law, or assigned by the Voters Committee or the Tribal Council.

4. Vice-Chairperson. If the Chairperson is unavailable because of recusal or any other reason, the Vice-Chairperson shall serve as acting Chairperson.

5. Secretary. The Secretary shall issue notices of all Voters Committee meetings, keep minutes of all meetings, and serve as custodian of and maintain within the Reservation copies of all minutes and associated documents, and all other Voters Committee documents, records and correspondence. As provided in subsection 8 below, Voters Committee documents, records and correspondence shall be delivered to and maintained by the Tribal Secretary.

6. Meetings; Removal for Non-Attendance.

a. Meetings of the Voters Committee may be called by the Chairperson or two Committee members. The Secretary shall give each Committee member reasonable notice of the time and place of the meeting. Neither the business to be transacted at, nor the purpose of the meeting, need be specified in the notice of the meeting. Minutes of every meeting shall be taken by

the Secretary or, in the Secretary's absence, a Committee member designated by the Chairperson.

b. Any Committee member who fails to attend or otherwise participate in three out of any four consecutive meetings of the Voters Committee shall be deemed removed as a Committee member, unless the Committee determines that one or more of such failures to attend should be excused.

c. Any action required or permitted to be taken at a meeting of the Voters Committee may be taken without a meeting if all Committee members sign a written consent to the action. Such consents shall be preserved with the minutes of the Voters Committee.

d. Committee members may participate in a Voters Committee meeting by conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other.

e. Any member of the Tribe may attend any meeting of the Voters Committee, subject to the right of the Committee to go into executive session when considered warranted by the Committee.

7. Committee Members' Fees and Expenses. At rates set by the Tribal Council in line with generally prevailing rates for service on Tribal commissions or boards, a fee shall be paid and out-of-pocket expenses shall be reimbursed to the Committee members for in-person participation at Voters Committee meetings or other functions or activities of or on behalf of the Committee (including travel time on the same day to off-Reservation sites). Such fees and expenses shall not be paid, however, to any Committee member who is receiving compensation for the time spent or expense reimbursement as an employee of or contractor to the Tribe.

8. Books and Records. The Voters Committee shall assure that all original books and records, minutes, and other material books, records, documents, correspondence and of the Committee, are timely delivered to the office of the Tribal Secretary to be maintained by the Tribal Secretary with the official records of the Tribe. All such materials shall be made available at any reasonable time for inspection and copying by any Committee member, and any duly authorized representative of the President or Tribal Council. Upon terminating office a Committee member shall turn over to his/her successor or the Chairperson in good order, all books, records, minutes, and other documents of the Voters Committee in his/her custody or control.

Section 21. APPLICABILITY TO OTHER MEMBERSHIP VOTES. Subject to the direction of the Tribal Council by majority vote, the provisions of this Ordinance, to the extent in whole or in part relevant or otherwise adaptable, shall be followed, adapted, or used as guidelines in conducting other votes of the Tribal membership such as, without limitation, referendums under the Tribal Constitution, votes seeking ratification, confirmation or other approval of actions of the Tribal Council, and votes of confidence or advisory votes with respect to proposed actions of the Tribal Council. This shall include, without limitation, the following provisions of this Ordinance:

Section 9.b -- Notice of Election

Section 10 -- Voters and Voters Lists

Section 11 -- Registration at Polls

Section 12 -- Ballots

Sections 13.a, .c and .d -- Casting of Ballots

Section 14 -- Ballot Boxes

Section 15 -- Absentee Voting

Sections 16.a - .d -- Canvass and Counting of Ballots, Certification of Results,
Storage of Election Documents.

Section 17 -- Election Boards

Section 20 -- Voters Committee

Section 22.b, .d, .e, .f and .h -- Election Contests and Recounts

Section 23 -- Violations

Section 22. ELECTION CONTESTS AND RECOUNTS. The Northern Cheyenne Tribal Court shall have jurisdiction over proceedings to contest elections and/or secure a recount of the ballots cast ("Election Contest"). An Election Contest shall be filed, conducted, and decided in accordance with the following provisions:

a. Applicable to All Elections. An Election Contest may be brought with respect to any and all elections.

b. Initiation; Defendants. An Election Contest shall be initiated by the filing of a complaint naming as defendants the Reservation-Wide Election Board and those winning candidates whose victory is being challenged. The complaint shall be filed, along with a \$50 filing fee, no later than seven calendar days after the results of the particular primary or general election being challenged have been certified by the Reservation-Wide Election Board by the execution and delivery to the Tribal Secretary of the Certificate of Reservation-Wide Election Results as provided in section 16.b ("Election Certification Date"). The complaint shall be served on each member of the Reservation-Wide Election Board and the winning candidates named in the complaint within 12 calendar days after the Election Certification Date.

c. **Plaintiff.** An Election Contest may be initiated only by one or more candidates who lost the primary or general election being challenged, and by no other person or party. If the plaintiff dies before the claims in his/her complaint are decided by the court, those claims shall not survive and shall be dismissed.

d. **Grounds.** An Election Contest complaint must allege, in reasonable detail, facts and claims:

- that serious or repeated violations of material provisions of this Ordinance, the Tribal Constitution and Bylaws, or other applicable law occurred in connection with the election; and
- that such violations actually, or in all likelihood, altered the outcome of the election.

The complaint may seek relief only as provided in subsection e below.

e. **Relief.** If the court finds and concludes that grounds described in subsection d above have been established by a preponderance of the evidence, it may grant the following relief to the extent sought and warranted:

- an order directing a recount of the votes cast for the positions in issue by the District Election Boards and the Reservation-Wide Election Board, under the supervision of the court; and/or
- judgment overturning the election results with respect to challenged positions and declaring a new winner for such positions; and/or
- judgment voiding the election results with respect to challenged positions and directing that a new election be held for such positions; and
- in connection with any of the foregoing, issuing such orders as it considers necessary for the implementation of the relief provided.

f. **Trial and Appeal.** An Election Contest shall be tried to the court and not to a jury, shall take precedence over all other matters before the Northern Cheyenne Tribal Court at trial and (if appealed) on appeal, and judgment shall be entered as promptly as possible. There shall be a right of appeal to the Tribal Appellate Court. In all such proceedings, all applicable provisions (as they may be amended) of Titles I (General Provisions Code), II (Appellate Code), IV (Rules of Civil Procedure and Civil Code), and VI (Rules of Evidence Code) of the Tribal Law & Order Code shall apply, unless inconsistent with the provisions of this section 22, in which case the provisions of this section 22 shall control.

g. **Continued Service in Office.** Notwithstanding the initiation and pendency of an

Election Contest, all winners in a challenged general election who have been certified and sworn into office shall remain in office, unless and until the court orders otherwise and all rights of appeal to the Tribal Appellate Court have been exhausted.

h. Strict Compliance. The provisions of this section 22 shall be strictly construed. Any failure to comply with subsections b, c or d above shall result in the prompt dismissal of the Election Contest.

Section 23. VIOLATIONS.

a. Election Fraud. Any candidate in a Tribal primary or general election who, directly or indirectly, commits or causes to be committed, or aids and abets in the commission of, any fraud in connection with the conduct of the election shall forfeit his/her right to be a candidate in the forthcoming primary or general election, as the case may be, or, if elected to office in the general election, shall forfeit his/her rights to the office and to all emoluments thereof. Such claims may be asserted in an Election Contest brought under section 22, or thereafter by the Tribe in a civil or criminal proceeding brought by the Tribal prosecutor, after probable cause for such claims is found to exist by vote of the Tribal Council.

b. Solicitation at Polls. On the day of any Tribal primary or general election, a candidate shall not campaign for office and/or loiter at any District polling place or within 25 feet thereof.

Section 24. AMENDMENT OR REPEAL. This Ordinance may be amended, repealed or suspended only by affirmative vote of two-thirds of all Tribal Council seats (whether such seats are filled or vacant), i.e., by affirmative vote of 8 Tribal Council members.

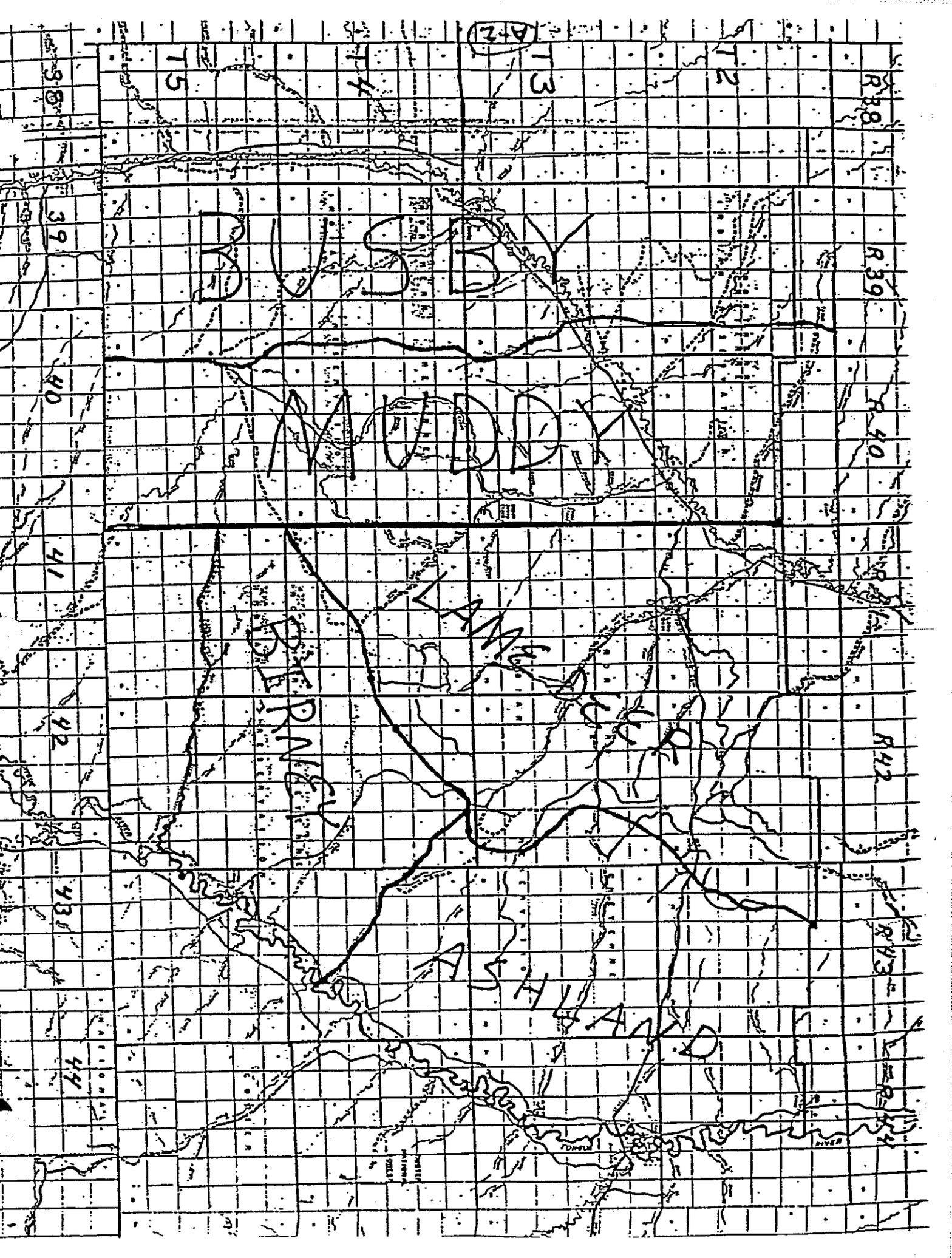


Exhibit A

MAP OF RESERVATION DISTRICTS

(Insert current map of Districts)

See page A-2



AMENDED*
CONSTITUTION AND BYLAWS
OF THE
NORTHERN CHEYENNE TRIBE
OF THE
NORTHERN CHEYENNE INDIAN RESERVATION

PREAMBLE

We, the members of the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation in Montana, in order to establish a more unified tribal organization and to insure and promote the best interests of our society, industry, prosperity, and the general welfare of ourselves and our posterity do hereby establish this Constitution and Bylaws.

ARTICLE I -- TERRITORY

The jurisdiction of the Northern Cheyenne Tribe under this Constitution and Bylaws shall extend to the territory within the confines of the Northern Cheyenne Indian Reservation boundaries as established by Executive Order dated November 26, 1884, under the administration of Chester A. Arthur and extended March 19, 1900, under the administration of William McKinley and to such other lands as may be hereafter added thereto by any law of the United States, except as otherwise provided by law.

ARTICLE II -- MEMBERSHIP

Section 1. The membership of the Northern Cheyenne Tribe shall consist of as follows:

(a) All persons of Northern Cheyenne Indian blood whose names appear on the official census roll as of January 1, 1935, provided that by January 1, 1962, corrections shall be made in said roll by the Tribal Council, subject to approval of the Secretary of the Interior.

(b) Each person of one-half (1/2) or more Northern Cheyenne Indian blood, regardless

* This document sets forth the text of the original Constitution and Bylaws adopted in 1935, as amended by amendments adopted in 1960 and 1996.

of residence, born heretofore or hereafter to any member or descendant of a member of the Northern Cheyenne Tribe whose name was or is on the census roll referred to in Section 1(a) shall automatically be entitled to membership in the Northern Cheyenne Tribe.

(c) All children heretofore born to any member of the Northern Cheyenne Tribe who was a resident of the Northern Cheyenne Indian Reservation at the time of the birth of said children.

Section 2. The Tribal Council shall have power to promulgate ordinances, subject to review by the Secretary of the Interior, covering future membership including adoptions and the loss of membership.

ARTICLE III -- GOVERNING BODY AND OFFICERS

Section 1. The governing body of the Northern Cheyenne Tribe under this Constitution and Bylaws shall be a council which shall hereafter be known as "The Tribal Council of the Northern Cheyenne."

Section 2. The Tribal Council shall consist of eleven members holding the following seats:

(a) One at-large seat held by the Vice President of the Tribe, except when the Vice President is presiding over the Tribal Council due to the absence of the President.

(b) Five seats allocated one each to the Reservation districts of Ashland, Birney, Busby, Muddy and Lane Deer.

(c) Five seats allocated among the five districts in accordance with the percentage of the Tribal membership associated with each district, with fractional seats being rounded off to the nearest whole number. The allocation of these five seats shall be determined for the regular election of 1996, and redetermined for the regular election held every four years thereafter. By ordinance, the Tribal Council shall establish standards and methods for the implementation of such allocations.

(d) The Tribal Council shall have power to change the boundaries of the districts.

(e) The members of the Tribal Council holding the ten seats allocated among the districts shall be selected through district primary elections followed by a general election conducted at-large, as provided in Article VI, Section 4. The Vice President holding the at-large seat shall be selected through a primary election followed by a general election, both conducted at-large as provided in Article VI, Section 3.

Section 3. The officers of the Tribe shall be a President and Vice President who shall

be elected by popular vote as hereinafter provided; a Sergeant at Arms elected by the Tribal Council from within its own number; and a Secretary and a Treasurer appointed by the Tribal Council from outside its number. The Secretary and the Treasurer shall have no vote. Other officers and committees shall be appointed as provided in Article I, Section 1 of the Bylaws.

Section 4. All regular elections for President, Vice President and Tribal Council seats allocated to Reservation districts shall be held in even numbered years on the date set for regular Congressional elections, including the regular election of 1996 which shall be held on Tuesday, November 5, 1996. The President and Vice President shall serve for four years, and the members of the Tribal Council holding the ten district seats shall serve for four years in staggered terms, provided that in the regular election of 1996 five members of the Tribal Council shall be elected for two-year terms, as set forth in Article VI, Section 4(d). After each regular election for the Tribal Council, the Council shall appoint the Sergeant at Arms, Secretary and Treasurer, each of whom shall serve at the pleasure of the Council.

Section 5. It is contemplated that the President, Vice President, Secretary and Treasurer, and all members of the Tribal Council ("Tribal Officials") will serve on a full-time basis, and will receive therefor a salary commensurate with the responsibilities of office and other appropriate emoluments of office, to the extent prudent in light of available Tribal financial resources. No Tribal Official may receive additional compensation or other financial benefits for: serving on any committee of the Tribal Council; serving on boards, commissions or bodies governing or managing instrumentalities or programs of the Tribe; or undertaking while in office tasks which would ordinarily be performed on behalf of the Tribe or an instrumentality or program of the Tribe by an employee or contractor.

ARTICLE IV -- POWERS OF THE TRIBAL COUNCIL

Section 1. Enumerated Powers. The Tribal Council of the Northern Cheyenne shall exercise the following powers, subject to any limitations imposed by the applicable statutes of the United States and subject further to all express restrictions upon such powers contained in this Constitution and the attached Bylaws:

- (a) To negotiate with the Federal, State, and local governments, on behalf of the Tribe, and to advise and consult with the representatives of the Interior Department on all activities of the Department that may affect the Northern Cheyenne Indian Reservation.
- (b) To employ legal counsel for the protection and advancement of the rights of the Northern Cheyenne Tribe and its members, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior.
- (c) To approve or prevent any sale, disposition, lease or encumbrance of tribal lands, interests in lands or other tribal assets, including minerals, gas and oil.
- (d) To advise the Secretary of the Interior with regard to all appropriation estimates

or Federal projects for the benefit of the Northern Cheyenne Tribe prior to the submission of such estimates to the Bureau of the Budget and to Congress.

(e) To engage in any business that will further the economic well-being of the members of the Tribe and to undertake any economic activity of any nature whatever not inconsistent with law or any of the provisions of this Constitution.

(f) To administer any funds within the control of the Tribe; to make expenditures from available funds for tribal purposes, including salaries and expenses of tribal officials or employees. All expenditures of tribal funds under control of the Tribal Council shall be by resolution duly approved by a majority of the Tribal Council in legal session and the amounts so expended shall be a matter of public record at all times.

The Tribal Council, subject to the approval of the Secretary of the Interior, or his authorized representative, shall prepare annual budget requests for the advancement to the control of the Tribe such money as is now or may hereafter be deposited to the credit of the Tribe in the United States Treasury or which may hereafter be appropriated for the use of the Tribe.

(g) To levy taxes or assessments upon members of the Northern Cheyenne Tribe and to require the performance of community labor in lieu thereof, and to levy taxes or license fees, subject to review by the Secretary of the Interior, upon nonmembers doing business within the Reservation.

(h) To exclude from the restricted lands of the Northern Cheyenne Indian Reservation persons not legally entitled to reside therein, under ordinances which shall be subject to review by the Secretary of the Interior.

(i) To promulgate and enforce ordinances, which shall be subject to review by the Secretary of the Interior, governing the conduct of members of the Northern Cheyenne Tribe and any other person or persons coming within the jurisdiction of the reservation, and providing for the maintenance of law and order and the administration of justice by establishing a reservation court and defining its duties and powers.

(j) To purchase, under condemnation proceedings in courts of competent jurisdiction, land or other property needed for public purposes, subject to the approval of the Secretary of the Interior.

(k) To protect and preserve the property, wildlife, and natural resources of the Tribe and to regulate the conduct of trade and the use and disposition of property upon the reservation, provided that any ordinance directly affecting nonmembers of the Tribe shall be subject to review by the Secretary of the Interior.

(l) To cultivate and preserve native arts, crafts, culture, and Indian ceremonials.

- (m) To administer charity and to protect the health and general welfare of the Tribe.
- (n) To establish subordinate organizations of members of the Tribe for economic purposes.
- (o) To regulate the inheritance of property, real and personal, other than allotted lands, within the territory of the Northern Cheyenne Indian Reservation, subject to review by the Secretary of the Interior, and to consult with the Examiner of Inheritance in all heirship findings before they are submitted to the Secretary of the Interior for determination.
- (p) To regulate the domestic relations of members of the Tribe and of nonmembers married into the Tribe.
- (q) To provide for the appointment of guardians for minors and mental incompetents by ordinance or resolution subject to review by the Secretary of the Interior.
- (r) To adopt resolutions regulating the procedures of the Council, other tribal agencies, and tribal officials of the reservation.
- (s) To delegate to subordinate boards or officers or to cooperative associations which are open to all members of the Tribe any of the foregoing powers, reserving the right to review any action taken by virtue of such delegated powers.

Section 2. Future Powers. The Tribal Council of the Northern Cheyenne Tribe may exercise such future powers as may in the future be given to the Council by members of the Tribe through the adoption of appropriate Bylaws and Constitutional amendments.

Section 3. Reserved Powers. Any right and powers heretofore vested in the Northern Cheyenne Tribe but not expressly referred to in this Constitution shall not be abridged by this article, but may be exercised by the people of the Northern Cheyenne Tribe through the adoption of appropriate Bylaws and Constitutional amendments.

Section 4. Manner of Review. Any resolution or ordinance which pursuant to this Constitution is subject to review by the Secretary of the Interior, shall be presented to the Superintendent of the Reservation within ten (10) days of enactment by the Tribal Council, and the Superintendent shall, within ten (10) days after receipt, approve or disapprove same.

If the Superintendent shall approve any ordinance or resolution, it shall thereupon become effective, but the Superintendent shall transmit a copy of the same, bearing his endorsement, to the Secretary of the Interior, who may within ninety (90) days from the date of enactment rescind the said ordinance or resolution for any cause by notifying the Tribal Council of such decision.

If the Superintendent shall refuse to approve any ordinance or resolution submitted to him within ten (10) days after its receipt, he shall advise the Tribal Council of his reasons therefor. If these

reasons appear to the Council insufficient, it may, by a majority vote, refer the ordinance or resolution to the Secretary of the Interior, who may within ninety (90) days from the date of its enactment approve the same in writing, whereupon the said ordinance or resolution shall become effective.

ARTICLE V -- BILL OF RIGHTS

Section 1. All members of the Tribe shall be accorded equal opportunities to participate in the economic resources and activities of the Tribe.

Section 2. All members of the Tribe may enjoy, without hindrance, freedom of worship, conscience, speech, press, assembly, and association as guaranteed by the Constitution of the United States.

ARTICLE VI -- ELECTIONS

Section 1. All members of the Tribe eighteen (18) years of age or over shall have the right to vote at all reservation elections, except when the Federal law requires the voter to be twenty-one (21) years of age or over.

Section 2. Election Ordinances. Subject to the provisions of this Constitution and Bylaws, all elections and other membership votes, whether primary, regular, special, referendum, or other election or vote, shall be conducted in accordance with such ordinance and resolutions as may be adopted by the Tribal Council.

Section 3. Election of President and Vice President. Candidates for President and Vice President shall be determined, and the President and Vice President shall be elected in at-large general elections, as follows:

(a) A person desiring to run for President or Vice President shall file a Declaration of Candidacy which certifies the intent to run for the office and the possession of all qualifications for the office, and shall pay a \$200 filing fee. For each regular election for President or Vice President after the 1996 election, the Tribal Council may adjust the filing fee to account for inflation or other factors. Any person qualifying for a general election for President or Vice President by write-in vote in a primary election shall promptly file a Declaration of Candidacy and pay the filing fee.

(b) If more than two qualified persons file to run for President or for Vice President, there shall be a primary election among such persons, conducted at large and held at least 30 days before the general election. Write-in voting shall be permitted in the primary. The two top vote-getters in the primary shall be the only candidates for such office in the general election, provided that if more than two persons tie for top vote-getter, or if there is one top vote-getter and a tie for second place, all such persons shall be the candidates. Write-in voting shall not be permitted in such general election. If a candidate dies,

withdraws or is disqualified prior to the general election, the candidates shall be redetermined on the basis of the primary results without considering votes cast for the former candidate, provided that if this yields less than two candidates, write-in voting shall be permitted in such general election.

(c) If no more than two qualified persons file to run for President or for Vice President, there shall be no primary election for such office. The person(s) who filed for such office shall be the only candidate(s) for such office in the general election. Write-in voting shall be permitted in such general election.

(d) On Tuesday, November 5, 1996, and on the date set for regular Congressional elections every four years thereafter, there shall be regular elections for President and Vice President. The top vote-getter in every regular election shall be elected for a four-year term.

Section 4. Election of Council. Candidates for the ten Tribal Council seats allocated among the Reservation districts shall be determined, and the Council members shall be elected in at-large general elections, as follows:

(a) A person desiring to run for a Tribal Council seat allocated to a district shall file a Declaration of Candidacy which certifies the intent to run and the possession of all qualifications for the office, and shall pay a \$50 filing fee. For each regular election for the Tribal Council after the 1996 election, the Tribal Council may adjust the filing fee to account for inflation or other factors. Any person qualifying for a general election for the Tribal Council by write-in vote in a primary election shall promptly file a Declaration of Candidacy and pay the filing fee.

(b) If the number of qualified persons filing to run for the Tribal Council from a district is more than twice the number of open Council seats allocated to the district, there shall be a primary election among such persons, conducted within the district and held at least 30 days before the general election. Only the voters of the district may vote in the primary. Write-in voting shall be permitted in the primary. In descending order of votes received, the top vote-getters in the district primary shall be included in the general election as the only candidates for the open seat(s) in the district, until the number of such included candidates equals twice the number of such open seat(s); provided that if there is a tie for lowest vote-getter among such persons, the tied persons shall be included among the candidates. Write-in voting shall not be permitted in such general election. If a candidate dies, withdraws or is disqualified prior to the general election, the candidates for the open seat(s) in the district shall be redetermined on the basis of the primary results without considering votes cast for the former candidate, provided that if this yields a number of candidates which is less than twice the number of such open seat(s), write-in voting shall be permitted in such general election.

(c) If the number of qualified persons filing to run for the Tribal Council from a

district is no more than twice the number of open Council seats allocated to the district, there shall be no primary election for such seat(s). The person(s) who filed for such seat(s) shall be the only candidate(s) for such seat(s) in the general election. Write-in voting shall be permitted in such general election.

(d) On Tuesday, November 5, 1996, there shall be a regular election to fill the ten Tribal Council seats allocated among the districts. The top vote-getter among the candidates for the seat(s) allocated to a district shall be considered elected to the seat allocated to the district under Article III, Section 2(b) and shall serve a four-year term. The other five successful Council candidates in that election shall be considered elected to the seats allocated under Article III, Section 2(c) and shall each serve a two-year term.

(e) On the date set for regular Congressional elections in 1998, and on the comparable date every two years thereafter, there shall be a regular election to fill five open Council seats, each for a four-year term.

(f) In every regular and special election for Tribal Council, the top vote-getter(s) among the candidates for open Council seat(s) allocated to a district shall, in descending order of votes received, be considered elected to such seat(s) until the open seat(s) have thereby been filled.

Section 5. Miscellaneous Election Rules.

(a) A person may not simultaneously file Declarations of Candidacy for more than one position. A person may not be listed as a candidate for more than one position in the general elections. If a person qualifies as a candidate for more than one position in the general elections, such person promptly shall advise the Tribal Secretary as to the single position for which such person is to be listed as a candidate in such elections.

(b) Lists of all persons running in elections, whether primary or general, for President, Vice President or the Tribal Council, shall be posted by the Secretary in each of the Reservation districts at least three weeks before the date of the election.

(c) No person may simultaneously hold more than one elected office. While holding an elected office a person may run for a second office, provided that, if such person is elected, the first office shall become vacant when such person is sworn in to the second office. While employed or retained by the Tribe or an instrumentality of the Tribe a person may run for office, provided that, if elected, such person shall resign from such employment or position.

(d) In all elections for President, Vice President or the Tribal Council other than primary elections, tie votes shall be resolved by a public drawing of lots by the Tribal Secretary.

(e) If a person who is elected to office in any regular or special election dies, withdraws or is disqualified before being sworn in to the office, candidates for the office shall be redetermined and a general election shall be held in a manner which, in the judgment of the Tribal Council, is most appropriate under the circumstances and in light of the policies underlying Section 3 or 4 above, as the case may be. The decision of the Tribal Council shall be final and not subject to judicial review in any court.

(f) A person elected as President, Vice President, or Tribal Council member shall be elected for the term of office specified in this Constitution and Bylaws and until his or her successor is sworn into office.

ARTICLE VII -- REMOVAL FROM OFFICE, FILING VACANCIES

Section 1. Forfeiture of Office.

(a) Any officer or councilman found guilty of a felony in any tribal, county, State or Federal court shall automatically be removed from office and may not stand for election for three (3) years thereafter.

(b) Any officer or councilman found guilty of a misdemeanor involving moral turpitude in any court shall automatically be removed from office, but such member may stand for nomination and re-election.

Section 2. Removal from Office. Any officer or councilman who shall fail to perform the duties assigned to him or shall be guilty of gross neglect may be removed by a two-thirds (2/3) vote of the Tribal Council, after affording the accused member a fair opportunity to be heard in his own defense. The decision of the Tribal Council shall be final.

Section 3. Any complaint against the President, a member, or officer of the Tribal Council must be in writing and sworn to be the complainant.

Section 4. Filling Vacancies in Office. If the office of President or Vice President, or a seat on the Tribal Council allocated to a Reservation district, becomes vacant due to death, resignation, removal, or other cause, the Tribal Council shall schedule a special election to fill the vacancy for the remainder of the term of office as follows:

(a) In the case of a vacancy in the office of President or Vice President, candidates for office shall be determined and the special election shall be held in accordance with Section 3 of Article VI. If the office of President is vacant, the Vice President shall serve as acting President in the interim. If the offices of both President and Vice President are vacant simultaneously, the Tribal Council shall appoint from within its own number an acting President who shall serve in the interim. While the Vice President or appointed Tribal Council member serves as acting President, such person's seat on the Tribal Council shall be considered temporarily vacant, and upon completion of such service such

person shall resume occupancy of the seat.

(b) In the case of a vacancy in one of the ten seats on the Tribal Council allocated among the districts, candidates shall be determined and the special election shall be held in accordance with Section 4 of Article VI.

(c) An election to fill a vacancy shall occur no later than 90 days after the occurrence of the vacancy, provided that, if the vacancy in office occurs when there is less than 180 days remaining in the term of office, the Tribal Council in its discretion may choose not to hold the election. The decision of the Tribal Council shall be final and not subject to judicial review in any court. If the Tribal Council so chooses not to hold an election as to a vacancy in a Tribal Council seat allocated to a district, the Council promptly shall publicly solicit the filing of Declarations of Candidacy by qualified persons desiring to be appointed to the seat for the remainder of its term. No filing fee shall be required. Promptly after the close of such filing period, by majority vote the Tribal Council shall make such appointment from among all qualified persons filing a Declaration of Candidacy.

(d) Subject to the provisions of this Constitution and Bylaws, all elections and other proceedings to fill a vacancy shall be conducted in accordance with such ordinances and resolutions as may be adopted by the Tribal Council.

ARTICLE VIII -- REFERENDUM

Section 1. Upon a petition, signed by at least ten (10) percent of the registered voters from each district, a referendum may be demanded on any tribal adoption of a person or the elimination of a person from the tribal roll, or on any proposed or enacted ordinance or resolution of the Tribal Council and the vote of the majority of the qualified voters voting in such referendum shall be conclusive and binding upon the Tribal Council, provided at least thirty (30) percent of the eligible voters shall vote in such referendum.

ARTICLE IX -- LAND

Section 1. Allotted Lands. Allotted lands, including heirship land, within the Northern Cheyenne Indian Reservation shall continue to be held as heretofore by their present owners. It is recognized that under existing law such lands may be inherited by the heirs of the present owner, whether or not they are members of the Northern Cheyenne Tribe. Likewise, it is recognized that under existing law the Secretary of the Interior may, in his discretion, remove restrictions upon such land, upon application by the Indian owner, whereupon the land will become subject to State taxes and may be mortgaged or sold. The right of the individual Indian to hold or to part with his land, as under existing law, shall not be abrogated by anything contained in this Constitution, but the owner of restricted land may, with the approval of the Secretary of the Interior, voluntarily convey his land to the Northern Cheyenne Tribe either in exchange for a money payment or in exchange for an assignment covering the same land or other

land, as hereinafter provided.

Section 2. Tribal Lands. The unallotted lands of the Northern Cheyenne Indian Reservation and all lands which may hereafter be acquired by the Northern Cheyenne Tribe or by the United States in trust for the Northern Cheyenne Tribe, shall be held as tribal lands and no part of such land shall be mortgaged, sold, or ceded. Tribal lands shall not be allotted to individual Indians but may be assigned to members of the Northern Cheyenne Tribe, or leased, or otherwise used by the Tribe, as hereinafter provided.

Section 3. Leasing of Tribal Land.

(a) Tribal land may be leased by the Tribal Council, with the approval of the Secretary of the Interior, for such periods as permitted by law.

(b) Grazing permits covering tribal lands may be issued by the Tribal Council, with the approval of the Secretary of the Interior, for such periods of time as permitted by law.

Section 4. Assignments of Tribal Land.

(a) The Tribal Council may by ordinance approved by the Secretary of the Interior provide for the granting and tenure of assignments of tribal land to members of the Tribe, provided, the rights of all members of the Tribe be not violated.

(b) Any member of the Tribe who owns an allotment or any share of heirship land or patent-in-fee land may voluntarily transfer his interest in such land to the Tribe in exchange for an assignment to the same land or for other land or a proportionate share in a larger grazing unit.

Section 5. Use of Unassigned Tribal Land. Tribal land which is not leased or assigned, including tribal timber reserves, shall be managed by the Tribal Council subject to the approval of the Secretary of the Interior, for the benefit of the members of the entire Tribe, and any cash income derived from such land shall accrue to the benefit of the Tribe as a whole.

Section 6. Purchase of Land by Tribe. The Northern Cheyenne Tribal Council is hereby authorized and empowered to use tribal funds to purchase lands or interests in lands for and on behalf of the Northern Cheyenne Tribe under such terms as may be agreed upon provided the purchase is approved by the Secretary of the Interior.

ARTICLE X -- AMENDMENTS

This Constitution and Bylaws may be amended by a majority vote of the qualified voters of the Tribe, voting at an election called for that purpose by the Secretary of the Interior, provided that at least thirty (30) percent of those entitled to vote shall vote in such election, but no amendment shall become effective until it shall have been approved by the Secretary of the

Interior. It shall be the duty of the Secretary of the Interior to call an election on any proposed amendment at the request of two-thirds (2/3) of the Tribal Council, or upon presentation of a petition signed by one-third (1/3) of the qualified voters of the Tribe.

ARTICLE XI -- SEPARATION OF POWERS

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

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

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

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



BYLAWS

ARTICLE I -- DUTIES OF OFFICERS

Section 1. The President may, if he desires, preside over all meetings of the Tribal Council. He shall, with the advice and consent of the Tribal Council, appoint delegates, representatives, committees, or other officers as are deemed proper from time to time. He shall have power to fill all vacancies, not otherwise provided for in this Constitution and Bylaws, that may occur when the Tribal Council is not in session and then he shall submit the names of such appointees at the following session. It shall be his duty to convene the Tribal Council for extra sessions. It shall be his duty to see that all enactments, orders, and resolutions are properly executed. He shall have the further right of conferring with any Federal or State official on any matters that affect the welfare of the Tribe. And he shall also have the further right to confer with the several district councils.

Section 2. The Vice President shall act as presiding officer of the Tribal Council whenever the President does not so preside. Whenever the President does not preside he may delegate any or all of his powers to the Vice President. In the event that the office of the President becomes vacant, the Vice President shall become temporary President and shall perform the duties and execute the powers of President until the office of President is filled.

Section 3. The Tribal Council Secretary shall keep a full report of all proceedings of each regular and special meeting of the Tribal Council and shall perform such other duties of like nature as the Council shall from time to time by resolution provide, and shall transmit copies of the minutes of each meeting to the President of the Council, to the Superintendent of the Reservation, to the Commissioner of Indian Affairs, and to all recognized District Councils of the reservation.

Section 4. The Tribal Council Treasurer shall be the custodian of all moneys which come under the jurisdiction or control of the Tribal Council of the Northern Cheyenne. He shall pay out money in accordance with the orders and resolutions of the Council. He shall keep accounts of all receipts and disbursements and shall make written reports of same to the Tribal Council at each regular and special meeting. He shall be bonded in such an amount as the Council by resolution shall provide, such bond to be approved by the Commissioner of Indian Affairs. The books of the Tribal Council Treasurer shall be subject to inspection or audit by the direction of the Council or the Commissioner of Indian Affairs.

Section 5. The Sergeant at Arms shall be present at all regular and extra sessions and shall keep order in such meetings and shall perform such other duties as the Tribal Council may by resolution provide.

ARTICLE II -- QUALIFICATIONS

Section 1. In order for a person to be eligible for the office of President of the Tribal

Council he must be at least thirty (30) years of age and a member, by blood, of the Northern Cheyenne Tribe.

Section 2. Any person elected as a member of the Tribal Council must be at least twenty-one (21) years of age and a member of the Northern Cheyenne Tribe.

ARTICLE III -- CERTIFICATION

Section 1. The Tribal Council shall appoint an election board which shall certify to the election of all members elected and this shall be done within five (5) days after the election.

Section 2. (Oath) I, _____, do solemnly swear that I will support and defend the Constitution of the United States against all enemies; carry out faithfully and impartially the duties of my office to the best of my ability; promote and protect the best interests of my Tribe, the Northern Cheyenne, in accordance with this Constitution and Bylaws.

This oath of office shall be administered by a Notary Public or Judge.

ARTICLE IV -- SALARIES

Section 1. The salaries of the members or other officers of the Tribal Council of the Northern Cheyenne Tribe may be paid out of available funds within the exclusive control of the Tribal Council or out of any other available tribal funds with the approval of the secretary of the Interior in accordance with ordinances duly enacted, provided that no Tribal Council shall enact any ordinance increasing the salaries of councilmen during the existing term of office.

ARTICLE V -- MEETINGS AND PROCEDURE

Section 1. The Tribal Council shall assemble on the first and third Mondays of each month.

Section 2. A majority of two-thirds (2/3) of the members of the Tribal Council must be present in order to constitute a quorum to do business.

Section 3. Extra sessions may be called by the President or by three members of the Tribal Council in writing to the President and when so-called two-thirds (2/3) of the members of the Tribal Council must be present to constitute a quorum, and the Tribal Council shall have power to transact business as in regular meetings.

Section 4. The presiding officer in meetings of the Tribal Council shall vote only in the case of a tie.

Section 5. Every order, resolution, or vote to which the concurrence of the Tribal Council may be necessary (except on the question of adjournment) shall be presented to the President of the Tribal Council, and before the same shall take effect it shall be approved by him

or being disapproved by him may become effective by being repassed by affirmative vote of seven members of the Tribal Council.

ARTICLE VI -- ADOPTION OF CONSTITUTION AND BYLAWS

Section 1. This Constitution and the attached Bylaws when approved by a majority of the adult voters of the Northern Cheyenne Tribe voting in a special election called by the Secretary of the Interior in which at least 30 percent of the eligible voters vote, shall be submitted to the Secretary of the Interior for approval and shall be effective from the date of such approval.

ARTICLE VII -- CODE OF ETHICS

Section 1. It is declared that the observance of high ethical standards by the President, Vice President, Secretary and Treasurer, and all members of the Tribal Council ("Tribal Officials") is essential to the conduct of Tribal government. In order to promote such high standards of public service and to strengthen the confidence of the Tribal membership in Tribal government, the principles set forth in Section 2 below are adopted as a Code of Ethics for Tribal Officials.

Section 2. Every Tribal Official shall be guided by the following principles in discharging the duties and exercising the powers of office. Except as may be otherwise specifically required or permitted by Tribal or federal law, while in office every Tribal Official shall:

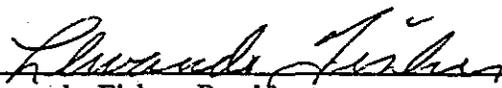
- (a) discharge the duties and exercise the powers of office in good faith and in a manner which the Tribal Official believes will best serve the interests of the Tribe;
- (b) not accept any compensation, gratuity, benefit or advantage (other than duly authorized emoluments of office) from any source other than the Tribe in return for exercising or abstaining from exercising any duty or right of office in any particular way;
- (c) not use Tribal money, property or personnel for personal benefit;
- (d) not disclose or use for personal gain any confidential information of the Tribe;
- (e) not knowingly falsify, alter, conceal or destroy any official book, record, account or other document of the Tribe;
- (f) not present, allow or pay any charge or claim against the Tribe which the Tribal Official knows to be improper; and
- (g) not knowingly make any false statement in any official statement, report, certificate or other document, presented to or on behalf of Tribal government or the Tribal membership, which has an adverse effect on significant interests of the Tribe or its membership.



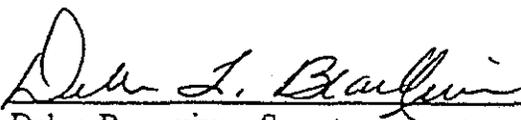
CERTIFICATE OF ADOPTION

The foregoing Amended Constitution and Bylaws have been ratified and approved in the following manner, pursuant to and in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended:

- The Constitution and Bylaws of the Northern Cheyenne Tribe were originally approved by the Secretary of the Interior on November 23, 1935, after they were ratified by vote of the Tribal membership in which 394 voted in favor and 53 voted against.
- On July 8, 1960, the Assistant Secretary of the Interior approved certain amendments to the Constitution and Bylaws, after the amendments were ratified by vote of the Tribal membership in which 273 voted in favor and 67 voted against.
- Pursuant to an order dated March 27, 1996, issued under delegated authority by the Billings Area Director, Bureau of Indian Affairs, further amendments of the Constitution and Bylaws were submitted to the Tribal membership for ratification. These further amendments consisted of Amendment A (Governmental Reform), Amendment B (Separation of Powers), and Amendment C (Code of Ethics). On May 10, 1996, the Tribal membership ratified each of the amendments by the following votes: Amendment A, 492 in favor and 74 against; Amendment B, 474 in favor and 91 against; and Amendment C, 494 in favor and 64 against.
- In each of the above-described ratifying votes of the Tribal membership, ballots were cast by more than 30% of those Tribal members entitled to vote.



Llevando Fisher, President
Northern Cheyenne Tribe



Debra Bearquiver, Secretary
Northern Cheyenne Tribe



John White, Acting Superintendent
Northern Cheyenne Agency

APPROVAL

I, Keith Beartusk, Area Director, Billings Area Office, Bureau of Indian Affairs, by virtue of authority delegated to me under the Act of June 18, 1934 (48 Stat. 984), as amended, do hereby approve the foregoing Amended Constitution and Bylaws of the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, as amended by ratifying vote of the Tribal membership on May 10, 1996.



Keith Beartusk, Area Director
Billings Area Office

Billings, Montana, May 31, 1996



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

NORTHERN CHEYENNE AGENCY
LAME DEER, MONTANA 59043

IN REPLY REFER TO:

Executive Direction
Code 100

Ms. Norma Gourneau, Acting President
Northern Cheyenne Tribe
P. O. Box 128
Lame Deer, Montana 59043

Dear Ms. Gourneau,

Enclosed is the original of the Northern Cheyenne Tribal Council Resolution No. DOI 013 (99) enacted by the Council on October 23, 1998 and received in this office on November 3, 1998.

Resolution No. DOI 013(99) - adopts the Northern Cheyenne Uniform Commercial Code, which will assist in clarifying commercial transactions on the Northern Cheyenne Reservations.

The Northern Cheyenne Tribal Council has the authority to take this action via Article IV, Section (I)(r) of the Constitution and By-Laws.

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

Sincerely,

Superintendent

NORTHERN CHEYENNE TRIBAL COUNCIL
NORTHERN CHEYENNE RESERVATION
LAME DEER, MONTANA

RESOLUTION NO. DOI-013 (99)

A RESOLUTION OF THE NORTHERN CHEYENNE TRIBAL COUNCIL ADOPTING
THE NORTHERN CHEYENNE UNIFORM COMMERCIAL CODE.

WHEREAS, the Northern Cheyenne Tribal Council is the governing body of the Northern Cheyenne Indian Reservation by authority vested in it pursuant to the Amended Constitution and By-laws of the Northern Cheyenne Tribe as approved by the Secretary of the Interior on May 31, 1996; and,

WHEREAS, pursuant to Article IV, Section 1(i), of the Amended Constitution and By-laws of the Northern Cheyenne Tribe the Tribal Council is authorized to promulgate ordinances; and

WHEREAS, Tribal Council believes that the adoption of a Uniform Commercial Code governing transactions on the Northern Cheyenne Reservation will result in increased economic activity by encouraging off-Reservation business to come on to the Reservation and do business with the Tribe and Tribal members; and

WHEREAS, the Tribal Council further believes that the adoption of a Uniform Commercial Code will result in the orderly resolution of disputes involving transaction that take place on the Reservation; and

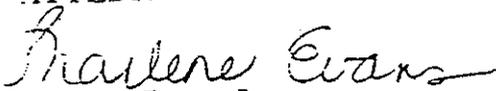
WHEREAS, the Tribal Council believes all of these results are desirable and in the best interest of the Northern Cheyenne Tribe and its members.

NOW, THEREFORE, BE IT RESOLVED, that the Northern Cheyenne Tribal Council hereby adopts the Northern Cheyenne Uniform Commercial Code attached hereto: provided, that at the expiration of the comment period (October 29, 1998), the Tribal Attorney make a final review of the code and incorporate any constructive comments. The Tribal President is authorized to sign the Uniform Commercial Code upon the recommendation of the Tribal Attorney:

PASSED, ADOPTED AND APPROVED by the Northern Cheyenne Tribal Council by 2 votes for passage and adoption and 2 votes against passage and adoption and 1 vote abstaining on this 23rd day of October, 1998.


William Waiks Along, President
Northern Cheyenne Tribal Council

ATTEST:


Shariene Evans, Secretary
Northern Cheyenne Tribal Council

APPROVED: 
SUPERINTENDENT

NORTHERN CHEYENNE

UNIFORM COMMERCIAL CODE

DEVELOPED BY NATIVE ACTION

P.O. Box 409

Lame Deer, Montana

Phone: (406) 477-6390

Fax: (406) 477-6421

9-106.	Classification of goods-"consumer goods"- "equipment"- "farm products"- "inventory".....	10
9-107.	Applicability of Other Statutes.....	10
9-108.	Perfection of security interests in multiple jurisdiction transactions.....	10
PART 2.	VALIDITY OF SECURITY AGREEMENT, ATTACHMENT OF SECURITY INTEREST, AND RIGHTS OF PARTIES TO SECURITY AGREEMENT	15
9-201.	General Validity of Security Agreement.....	15
9-202.	Title to Collateral Immaterial.....	15
9-203.	Attachment and Enforceability of Security Interest; Proceeds; Support Obligations; Formal Requisites.....	15
9-204.	After-Acquired Property; Future Advances.....	16
9-205.	Use or Disposition of Collateral Without Accounting Permissible.....	16
9-206.	Agreement Not To Assert Défenses Against Assignee-Modification Of Sales Warranties Where Security Agreement Exists.....	17
9-207.	Rights and Duties When Collateral is in Secured Party's Possession.....	17
9-208.	Request for Accounting, List of Collateral or Statement of Account.....	18
PART 3.	PERFECTION OF SECURITY INTERESTS.....	19
9-301.	Perfection and Priority of Certain Possessory and Non-Possessory Security Interest.....	19
9-302.	Perfection and Priority of Security Interests in Goods Covered by a Certificate of Title.....	19
9-303.	Persons Who Take Priority Over Unperfected Security Interests -- Right of "Lien Creator".....	19
9-304.	When Filing is Required to Perfect Security Interest -- Security Interests to Which Filing Provisions of this Chapter Do Not Apply.....	20
9-305.	When Security Interest is Perfected -- Continuity of Perfection.....	21

9-503.	What Constitutes Filing -- Duration of Filing -- Fees Effect of Lapsed Filing -- Duties of Filing Officer --Computerized Farm Statement System.	37
9-504.	Termination Statement.	39
9-505.	Assignment of Security Interest -- Duties of Filing Officer -- Fees.	40
9-506.	Release of Collateral -- Duties of Filing Officer -- Fees.	40
9-507.	Information from filing officer.	41
9-508.	Utility Financing Statement -- Place of Filing - Contents -- Perfection of Security Interest.	41
9-509.	Continued Applicability of Laws to Transmitting Utilities.	42
9-510.	Security Agreements and Termination Statements -- When Destroyed.	42
9-511.	Financing Statements Covering Consigned or Leased Goods.	42
9-512.	RESERVED.	42
9-513.	Filing Provisions Not to Affect Department Authority as to Branded Livestock.	42
9-514.	Filing of a Facsimile Copy.	43
9-515.	Removal of Improper or Fraudulent Liens.	43
PART 6.	DEFAULT.	43
SUB-PART 1.	DEFAULT AND ENFORCEMENT OF SECURITY INTEREST.	43
9-601.	Default and Enforcement of Security Interest.	43
9-602.	Waiver and Variance of Rights and Duties.	44
9-603.	Agreement on Standards Concerning Rights and Duties.	44
9-604.	Procedure if Security Agreement Covers Both Real And Personal Property or Fixtures.	45
9-605.	RESERVED.	45
9-606.	Collection Rights of Secured Party.	45
9-607.	Secured Party's Right to Take Possession After Default.	46

INTRODUCTION

The purpose for the development of the Northern Cheyenne Uniform Commercial Code and its adoption by the Northern Cheyenne Tribal Council, is to improve the conditions for business and economic development on the Northern Cheyenne Reservation. A further purpose of this code is to exercise Tribal Sovereignty through the enactment of Tribal regulation of commercial activity on the Northern Cheyenne Reservation.

The adoption of this ordinance, (hereinafter referred to as "UCC"), represents a Tribal effort to bring certainty to the regulation of business transactions, by creating a Tribal legal/commercial infrastructure for the recognition and protection of the rights of both creditors and debtors. While the laws and procedures developed herein do not mirror the corresponding Montana UCC provisions verbatim, the state statute was relied upon for guidance, in order to maintain internal consistency and promote uniformity to the degree possible, between Tribal and state law.

This exercise of Tribal Sovereignty is designed to increase the level of commercial lending activity for both consumer transactions and the development of Tribal member owned and operated small businesses on the Northern Cheyenne Reservation. Additionally, non-Indian owned businesses operating on the Reservation will be provided certainty with regard to the status of Tribal regulation of commercial activity, through the creation of Tribal laws and procedures which must be adhered to in order to do business on the Reservation.

1-104. Construction Against Implicit Repeal.

This Code is intended to provide unified coverage and regulation of commercial transactions, and any part may be expressly repealed or modified pursuant to Tribal statute, resolution or ordinance. However, no part of this Code shall be deemed to be impliedly repealed or modified by any such Tribal legislation, if such construction (to repeal or modify) can be reasonably avoided.

1-105. Territorial Application of the Code--Parties' Power to Designate Applicable Law.

Except as provided in this section, when a commercial transaction bears a reasonable relation to the Northern Cheyenne Tribe and also to any other tribe, nation, or state, the parties may agree that the law of either the Northern Cheyenne Tribe or of such other tribe, nation, or state shall govern their rights and duties. The designation of the law of any other tribe, nation, or state as the choice of applicable law shall be closely scrutinized for any commercial transactions which arise within the jurisdiction of the Northern Cheyenne Tribe; and shall be given effect if contained in a written acknowledgment separate from the security agreement, and which states the choice of applicable law to be applied, printed in capital letters of not less than 10 point boldfaced type, and signed separately by the parties. When such separate acknowledgment is not obtained, such designation of applicable law shall only be effective if made freely and knowingly, and expressed in written form. Failing such valid agreement, this Code applies to all commercial transactions arising within the jurisdiction of the Northern Cheyenne Tribe.

1-106. Remedies to be Liberally Administered.

(1) Remedies under this Code are to be liberally applied in order to put the aggrieved party in a position as close as possible to where they would have been had the other party fully performed. Consequential, special or punitive damages can only be obtained if expressly provided for in the Code or in other applicable law.

2) Any right or obligation described in this Code is enforceable by court action, even though no remedy may be expressly provided, unless a different and/or limited remedy is specified.

1-107. Waiver of Claim or Right After Breach.

At their option, an aggrieved party may entirely or partially waive their right or claim arising from an alleged breach of contract, by signing and delivering to the other party, a written waiver.

1-108. Severability.

All parts of this Code are severable and should a court of competent jurisdiction invalidate any part, it shall be deemed severed. However, the remainder of this Code will be given effect.

(12) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures, including equipment, products, crops and inventory, but does not include money, documents, instruments, minerals or natural resources prior to extraction. "Goods" also includes standing timber that is to be cut and removed under a conveyance or contract for sale, the unborn young of animals, and growing crops.

(13) "Instrument" is a negotiable document or other writing which supports the right to the payment of money according to its terms.

(14) "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like.

(15) "Notice" is the knowledge of a fact. There can be actual knowledge of the fact; or notification of a fact, so as to be "put on notice"; or implied knowledge of a fact, based upon all of the facts and circumstances known to a person at the time. In such a case, a person knew or should have known something to be a fact.

(16) "Party" is a person, organization or corporation who has entered into an agreement or otherwise engaged in a transaction within the scope of this Code.

(17) "Punitive Damages" are an award of damages intended to punish malicious or willful conduct, or bad faith, and deter such conduct in the future. Such damages are not limited to the value of the actual damages sustained.

(18) "Presumption" or "presumed" means that the trier of fact must accept the existence of a fact unless and until evidence is received which supports a finding of its non-existence.

(19) "Purchase" is a transaction where one party receives something of value through sale, barter, discount, negotiation, mortgage, pledge lien, issue or re-issue, gift or other voluntary transfer of interest in property. However, some purchases by barter do not fall within the scope of this Code (See Section 1-109).

(20) "Purchase money security interest". A security interest is a "purchase money security interest" to the extent that it is:

- (a) Taken or retained by the seller of the collateral to secure all or part of its price; or
- (b) Taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used.

(21) "Security agreement" means an agreement which creates or provides for a security interest.

collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.

(c) If the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understand at the time that the security interest attaches that the goods will be kept in another jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or nonperfection of the security interest from the time it attaches until 30 days after the debtor receives possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the 30-day period.

(d) When collateral is brought into and kept in this jurisdiction while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security interest remains perfected, but if action is required by part 3 of this chapter to perfect the security interest:

(i) if the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of 4 months after the collateral is brought into this jurisdiction, whichever period first expires, the security interest becomes unperfected at the end of that period and is thereafter considered to have been unperfected as against a person who became a purchaser after removal;

(ii) if the action is taken before the expiration of the period specified in (1)(d)(i), the security interest continues perfected thereafter;

(iii) for the purpose of priority over a buyer of consumer goods (9-309(2)), the period of the effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with respect to perfection in (1)(d)(i) and (ii).

21. a) Subsection (2) applies to goods covered by a certificate of title issued under a statute of this jurisdiction or of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection.

(b) Except as otherwise provided in subsection (2), perfection and the effect of perfection or nonperfection of the security interest are governed by the law, including the conflict of laws rules, of the jurisdiction issuing the certificate until 4 months

United States or Canada and the collateral is accounts or general intangibles for money due or to become due, the security interest may be perfected by notification to the account debtor. As used in subsection (3)(c), "United States" includes its territories and possessions and the Commonwealth of Puerto Rico.

(d) A debtor shall be considered located at the debtor's place of business if the debtor has one, at the chief executive office if the debtor has more than one place of business, otherwise at the debtor's residence. If, however, the debtor is a foreign air carrier under the Federal Aviation Act, it shall be considered located at the designated office of the agent upon whom service of process may be made on behalf of the foreign air carrier.

(e) A security interest perfected under the law of the jurisdiction of the location of the debtor is perfected until the expiration of 4 months after a change of the debtor's location to another jurisdiction or until perfection would have ceased by the law of the first jurisdiction, whichever period first expires. Unless perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is considered to have been unperfected as against a person who became a purchaser after the change.

(4) The rules stated for goods in subsection (1) apply to a possessory security interest in chattel paper. The rules stated for accounts in subsection (3) apply to a nonpossessory security interest in chattel paper, but the security interest may not be perfected by notification to the account debtor.

(5) Perfection and the effect of perfection or nonperfection of a security interest which is created by a debtor who has an interest in minerals or the like (including oil and gas) before extraction and which attaches thereto as extracted or which attaches to an account resulting from the sale thereof at the wellhead or minehead are governed by the law (including the conflict of laws rules) of the jurisdiction wherein the wellhead or minehead is located.

(6) (a) This subsection (6) applies to investment property.

(b) Except as otherwise provided in subsection (6) (f), during the time that a security certificate is located in a jurisdiction, perfection of a security interest, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security are governed by the local law of that jurisdiction.

located the chief executive office of the commodity intermediary.

- (f) Perfection of a security interest by filing, automatic perfection of a security interest in investment property granted by a broker or securities intermediary, and automatic perfection of a security interest in a commodity contract or commodity account granted by a commodity intermediary are governed by the local law of the jurisdiction in which the debtor is located.

PART 2. VALIDITY OF SECURITY AGREEMENT, ATTACHMENT OF SECURITY INTEREST, AND RIGHTS OF PARTIES TO SECURITY AGREEMENT

9-201. General Validity of Security Agreement.

(1) Except as otherwise provided by this Title, a security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors.

(2) Nothing in this Title validates any practice illegal under any statute or regulation governing usury, small loans, retail installment sales, or the like, or extends the application of any such statute or regulation to any transaction not otherwise subject to the statute or regulation.

9-202. Title to Collateral Immaterial.

Each provision of this chapter with regard to rights, obligations and remedies applies whether title to collateral is in the secured party or in the debtor.

9-203. Attachment and Enforceability of Security Interest; Proceeds; Support Obligations; Formal Requisites.

(1) A security interest is not enforceable against the Debtor or third parties with respect to the collateral and does not attach unless:

- (a) The collateral is in the possession of the Secured Party pursuant to the debtor's agreement, or the debtor has signed a security agreement which contains a description of the collateral. When the security interest covers crops growing, crops to be grown or timber to be cut, the description must also include a description of the land concerned; or
- (b) Value has been given; and
- (c) The debtor has rights in the collateral.

**9-206. Agreement Not To Assert Defenses Against Assignee-
Modification Of Sales Warranties Where Security Agreement
Exists.**

Subject to any Tribal statute, resolution or ordinance which establishes a different rule for buyers or lessees of consumer goods, an agreement by a buyer or lessee that he will not assert against an assignee any claim or defense which he may have against the seller or lessor is enforceable by an assignee who takes his assignment for value, in good faith and without notice of a claim or defense, except as to defenses of a type which may be asserted against a holder in due course of a negotiable instrument. A buyer who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.

**9-207. Rights and Duties When Collateral is in Secured Party's
Possession.**

(1) A secured party must use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of an instrument or chattel paper, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(2) Unless otherwise agreed and notwithstanding any contrary provision in Section 9-602, when collateral is in the secured party's possession:

- (a) Reasonable expenses, including the cost of any insurance and payment of taxes or other charges incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;
- (b) The risk of accidental loss or damage is on the debtor to the extent of any deficiency in any effective insurance coverage;
- (c) The secured party may hold as additional security any increase or profits (except money) received from the collateral, but money so received, unless remitted to the debtor, must be applied to reduce the secured obligation;
- (d) The secured party must keep the collateral identifiable but collateral of which any unit is by nature or usage of trade the equivalent of any other like unit may be commingled; and
- (e) The secured party may repledge the collateral upon terms which do not impair the debtor's right to redeem it.

-203. Obligation of Good Faith.

Every contract or duty within this Code is subject to a requirement that all parties act in good faith in its performance or enforcement.

1-204. Statute of Frauds for Personal Property not Otherwise Covered.

Oral contracts for sale of personal property valued at more than \$500.00 are not valid or enforceable. To be valid and enforceable, such contracts must be in writing, contain all material terms, and be signed by the party against whom enforcement is sought.

1-205. Performance or Acceptance Under Reservation of Rights.

A party may expressly reserve his/her contractual rights and then perform or promise performance in a manner demanded or proposed by the other party, without waiving the rights reserved.

Chapters 3 through 8 reserved.

or agency;

- (f) A sale of accounts or chattel paper, as part of a sale of the business out of which they arose;
- (g) An assignment of accounts or chattel which is for the purpose of collection only;
- (h) A transfer of a right to payment under a contract to an assignee who is also to do the performance under the contract;
- (i) A transfer of a single account to an assignee in whole or partial satisfaction of a preexisting indebtedness;
- (j) A transfer of an interest or claim under any insurance policy, except:
 - (i) a transfer by a healthcare provider of a right to payment arising out of the furnishing of healthcare goods or services; and
 - (ii) as provided with respect to proceeds (Section 9-308) and priorities in proceeds as set forth in other sections in this Code;
- (k) A right represented by a judgment (other than a judgment taken on a right to payment which was collateral);
- (l) Any right of set-off;
- (m) A transfer in whole or in part of any claim arising out of tort; or

2) The application of this Title is limited to the extent that provision is made within this Title for:

- (a) Fixtures in Section 9-313, or
- (b) The creation or transfer of an interest, including a lease or rents, or lien on real estate.

9-105. Purchase Money Security Interest.

A security interest is a "purchase money security interest" to the extent that it is:

- (a) Taken or retained by the seller of the collateral to secure all or part of its price; or

is received by him.

(3) A debtor is entitled to such a statement once every six months without charge. The secured party may require payment of a charge not exceeding \$15.00 for each additional statement furnished.

PART 3. PERFECTION OF SECURITY INTERESTS.

9-301. Perfection and Priority of Certain Possessory and Non-Possessory Security Interest.

(1) The following rules apply to a possessory or non-possessory security interest in collateral other than goods covered by a certificate of title described in Section 9-302, deposit accounts, and investment property.

(2) Except as otherwise provided in this section, perfection and the effect of perfection or non-perfection of a security interest in collateral are governed by the laws of the Northern Cheyenne Tribe.

9-302. Perfection and Priority of Security Interests in Goods Covered by a Certificate of Title.

(1) This subsection applies to goods covered by certificate of title issued under Northern Cheyenne Tribal law or from any other jurisdiction under which indication of a security interest on the certificate is required as a condition of perfection.

(2) Goods become covered by a certificate of title when an appropriate application for the certificate and the applicable fee are delivered to the appropriate authority.

(3) Perfection, the effect of perfection or non-perfection, and the priority of the security interest are governed by the local law of the jurisdiction under whose certificate the goods are covered. This security interest is valid from the time the goods become covered by the certificate until the time the certificate becomes ineffective under the law of that jurisdiction, or the time the goods become covered by a certificate of title from another jurisdiction.

9-303. Persons Who Take Priority Over Unperfected Security Interests -- Right of "Lien Creditor".

(1) Except as otherwise provided in subsection 1, an unperfected security interest is subordinate to the rights of:

(a) Persons entitled to priority under 9-314;

(b) A person who becomes a lien creditor before the security interest is perfected;

(c) In the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in

extent provided in 9-315;

(e) An assignment of accounts which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor;

(f) An assignment for the benefit of all creditors of the transferor, and subsequent transfers by the assignee thereunder;

(2) If a secured party assigns a perfected security interest, no filing under this chapter is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(3) The filing of a financing statement otherwise required by this chapter is not necessary or effective to perfect a security interest in property subject to:

(a) A statute or treaty of the United States which provides for a national or international registration or a national or international certificate of title or which specifies a place of filing different from that specified in this chapter for filing of the security interest; or

(b) The following statutes of the State of Montana: Title 61, chapter 3, which relates to motor vehicles; Title 23, chapter 2, parts 5 and 6, which relates to boats and snowmobiles; but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of this chapter (part 4) apply to a security interest in that collateral created by the person as debtor; or

(c) A certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection 9-108(2).

4) Compliance with a statute or treaty described in subsection (3) is equivalent to the filing of a financing statement under this chapter, and a security interest in property subject to the statute or treaty can be perfected only by compliance therewith except as provided in 9-108 on multiple jurisdiction transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by the provisions of the statute or treaty; in other respects the security interest is subject to this chapter.

5) A security interest remains perfected for a period of 21 days without filing where a secured party having a perfected security interest in an instrument, a certificated security, a negotiable document, or goods in possession of a bailee other than one who has issued a negotiable document therefor:

- (a) Makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange; but priority between conflicting security interests in the goods is subject to 9-314(3); or
- (b) Delivers the instrument or certificated security to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.

(6) After the 21-day period in subsections (4) and (5), perfection depends upon compliance with applicable provisions of this chapter.

9-307. When Possession by Secured Party Perfects Security Interest Without Filing.

A security interest in goods, instruments, money, negotiable documents, or chattel paper may be perfected by the secured party's taking possession of the collateral. A security interest in the right to proceeds of a written letter of credit may be perfected by the secured party's taking possession of the letter of credit. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this chapter. The security interest may be otherwise perfected as provided in this chapter before or after the period of possession by the secured party.

9-308. "Proceeds" -- Secured Party's Rights on Disposition of Collateral.

(1) "Proceeds" includes whatever is received upon the sale, exchange, collection, or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement. Any payments or distributions made with respect to investment property collateral are proceeds. Money, checks, deposit accounts, and the like are "cash proceeds". All other proceeds are "noncash proceeds".

- (c) In identifiable cash proceeds in the form of checks and the like which are not deposited in a deposit account prior to the insolvency proceedings; and
 - (d) In all cash and deposit accounts of the debtor in which proceeds have been commingled with other funds, but the perfected security interest under this subsection (4)(d) is:
 - (i) subject to any right of setoff; and
 - (ii) limited to an amount not greater than the amount of any cash proceeds received by the debtor within 10 days before the institution of the insolvency proceedings less the sum of:
 - (A) the payments to the secured party on account of cash proceeds received by the debtor during such period; and
 - (B) the cash proceeds received by the debtor during such period to which the secured party is entitled under subsections (4)(a) through (4)(c).
- (5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:
- (a) If the goods were collateral at the time of sale for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.
 - (b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. The security interest is prior to a security interest asserted under subsection 3-109(a) to the extent that the transferee of the chattel paper was entitled to priority under 3-310.
 - (c) An unpaid transferee of the account has a security interest in the goods against the transferor. The security interest is subordinate to a security interest asserted under subsection 3-109(a).
 - (d) A security interest of an unpaid transferee asserted

9-314. **Priorities Among Conflicting Security Interests in the Same Collateral.**

(1) The rules of priority stated in other sections of this part and in the following sections shall govern where applicable: 9-108 on security interests related to other jurisdictions.

(2) A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than 3 months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that the earlier interest secures obligations due more than 6 months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

(3) A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if:

- (a) The purchase money security interest is perfected at the time the debtor receives possession of the inventory; and
- (b) The purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory:
 - (i) before the date of the filing made by the purchase money secured party; or
 - (ii) before the beginning of the 21-day period if the purchase money security interest is temporarily perfected without filing or possession (9-306(5)); and
- (c) The holder of the conflicting security interest receives notification within 5 years before the debtor receives possession of the inventory; and
- (d) The notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing the inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within 20 days thereafter.

(5) In all cases not governed by other rules stated in this section including cases of purchase money security interests which do not

arises before the goods become fixtures, the security interest is perfected by a fixture filing before the goods become fixtures or within 10 days thereafter, and the debtor has an interest of record in the real estate or is in possession of the real estate;

(b) The security interest is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the security interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the debtor has an interest of record in the real estate or is in possession of the real estate;

(c) The fixtures are readily removable factory or office machines or readily removable replacements of domestic appliances which are consumer goods, and before the goods become fixtures the security interest is perfected by any method permitted by this chapter; or

(d) The conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this chapter.

(5) A security interest in fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate if:

(a) The encumbrancer or owner has consented in writing to the security interest or has disclaimed an interest in the goods as fixtures; or

(b) The debtor has a right to remove the goods as against the encumbrancer or owner. If the debtor's right terminates, the priority of the security interest continues for a reasonable time.

(6) Notwithstanding subsection (4) (a) but otherwise subject to subsections (4) and (5), a security interest in fixtures is subordinate to a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent that it is given to refinance a construction mortgage, a mortgage has this priority to the same extent as the construction mortgage.

(7) In cases not within the preceding subsections, a security interest in fixtures is subordinate to the conflicting interest of an encumbrancer or owner of the related real estate who is not the debtor.

(8) When the secured party has priority over all owners and encumbrancers of the real estate, he may, on default, subject to the provisions of Part 6, remove his collateral from the real estate but

permission to remove until the secured party gives adequate security for the performance of this obligation.

9-317. Priority When Goods Are Commingled or Processed.

(1) If a security interest in goods was perfected and subsequently the goods or a part thereof have become part of a product or mass, the security interest continues in the product or mass if:

- (a) The goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass; or
- (b) A financing statement covering the original goods also covers the product into which the goods have been manufactured, processed or assembled. In a case to which paragraph (b) applies, no separate security interest in that part of the original goods which has been manufactured, processed or assembled into the product may be claimed under 9-316.

(2) When under subsection (1) more than one security interest attaches to the product or mass, they rank equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass.

9-318. Priority Subject to Subordination.

Nothing in this chapter prevents subordination by agreement by any person entitled to priority.

9-319. Secured Party Not Obligated on Contract of Debtor.

The mere existence of a security interest or authority given to the debtor to dispose of or use collateral does not impose contract or tort liability upon the secured party for the debtor's acts or omissions.

9-320. Defenses Against Assignee -- Modification of Contract After Notification of Assignment -- Term Prohibiting Assignment Ineffective -- Identification and Proof of Assignment.

(1) The rights of an assignee are subject to:

- (a) All the terms of the contract between the account debtor and assignor and any defense or claim arising therefrom; and
- (b) Any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment.

(2) So far as the right to payment or a part thereof under an assigned contract has not been fully earned by performance, and

default, breach, claim, defense, termination, right of termination, or remedy under the general intangible.

(4) To the extent that a term in a general intangible, statute, rule, or regulation is ineffective under Section 9-401 (3) or (4) but is effective under other law, the creation, attachment, or perfection of a security interest in the general intangible:

- (a) Is not enforceable against the account debtor;
- (b) Imposes no duties or obligations on the account debtor; and
- (c) Does not require the account debtor to recognize the security interest, pay or tender performance to the secured party, or accept payment or performance from the secured party.

(5) This section controls over any inconsistent provisions of other parts of this Code, or any other conflicting Tribal law or authority.

PART 5. FILING.

9-501. Place of Filing -- Erroneous Filing -- Removal of Collateral.

) Except for financing statements filed pursuant to 9-508, the proper place to file in order to perfect a security interest is as follows:

- (a) When the collateral is consumer goods, then in the office of the county clerk and recorder in the county of the debtor's residence or if the debtor is not a resident of this state then in the office of the county clerk and recorder in the county where the goods are kept;
- (b) When the collateral is timber to be cut or is minerals or the like (including oil and gas) or accounts subject to 9-108(5), or when the financing statement is filed as a fixture filing (9-315) and the collateral is goods which are or are to become fixtures, then in the office where a mortgage on the real estate would be filed or recorded;
- (c) In all other cases, in the office of the secretary of state.

(2) A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this chapter and is also effective with regard to collateral covered by the financing statement against

(c) Collateral as to which the filing has lapsed, if within 5 years of the lapse; or

(d) Collateral acquired after a change of name, identity, or corporate structure of the debtor (subsection (7)).

(3) A form substantially as follows is sufficient to comply with subsection (1):

Name of debtor (or assignor)
Social security number or tax identification number
Address
Name of secured party (or assignee)
Address

1. This financing statement covers the following types (or items) of property:
(Describe)

2. (If collateral is crops, livestock, or unmanufactured agricultural products) The above described crops, livestock, or unmanufactured agricultural products are growing, being raised, or being produced or are to be grown, raised, or produced on:
(Describe Real Estate and County Where Located)

3. (If applicable) The above goods are to become fixtures on:
(Describe Real Estate)
and this financing statement is to be filed in the real estate record. (If the debtor does not have an interest or record) The name of a record owner is

4. (If products of collateral are claimed) Products of the collateral are also covered.
(Use whichever Signature of Debtor (or Assignor)
is applicable) Signature of Secured Party (or Assignee)

(4) A financing statement may be amended by filing a writing signed by both the debtor and the secured party. An amendment does not extend the period of effectiveness of a financing statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. In this chapter, unless the context otherwise requires, the term "financing statement" means the original financing statement and any amendments.

(5) (a) A financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to 9-108(5), or a financing statement filed as a fixture filing (9-315) when the debtor is not a transmitting utility, must show that it covers this type of collateral, must recite that it is to be filed in the real estate records, and the financing statement must contain a description of the real estate sufficient if it were contained in a

-503. **What Constitutes Filing -- Duration of Filing -- Fees
Effect of Lapsed Filing -- Duties of Filing Officer --
Computerized Farm Statement System.**

- (1) (a) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this chapter.
 - (b) The secretary of state may treat a facsimile copy of a document and the signatures on the facsimile copy in the same manner as an original for purposes of 9-502 and subsection (1)(a) of this section. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy.
 - (c) A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document.
- (2) Except as provided in subsection (6), a filed financing statement is effective for a period of 5 years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the 5-year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until 60 days after termination of the insolvency proceedings or until expiration of the 5-year period, whichever occurs later. Upon lapse the security interest becomes unperfected unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is considered to have been unperfected as against a person who became a purchaser or lien creditor before lapse.
- (3) A continuation statement may be filed by the secured party within 6 months prior to the expiration of the 5-year period specified in subsection (2). Any continuation statement must be signed by the secured party, identify the original statement by file number, and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with 9-505(2), including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for 5 years after the last date to which the filing was effective, after which it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to the lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement.
- (4) Except as provided in subsection (7), a filing officer shall mark each statement with a file number and with the date and hour of

liability coverage to protect against input errors causing loss to a secured party.

(10) The secretary of state shall, upon request of a clerk and recorder, mail a certified copy of a financing statement, continuation statement, assignment, amendment, or termination covering collateral described in subsection (8) to the clerk and recorder in the county of the principal debtor's residence. The secretary of state shall mail the requested copies at least once each week. This subsection does not require the secretary of state to mail a copy of any document that does not specifically indicate the county of the principal debtor's residence on its face.

(11) Financing statement information in the computer system constitutes public writings within the meaning of Montana Code Annotated section 2-6-101, but the information may not be used to compile mailing lists.

(12) The secretary of state, with advice from the county clerk and recorders, shall by administrative rule establish fees as required by this part. The fees must be commensurate with the costs of processing the documents. The secretary of state shall maintain records sufficient to support the amounts of the fees established under this subsection. The secretary of state shall deposit all fees in the enterprise fund in the state treasury. The secretary of state shall disseminate the uniform fee schedule to the county clerk and recorders for their use.

9-504. Termination Statement.

(1) If a financing statement covering consumer goods is filed within 15 days following written demand by the debtor after there is no outstanding secured obligation and no commitment to make advances, incur obligations, or otherwise give value, the secured party must file with each filing officer with whom the financing statement was filed a termination statement to the effect that he no longer claims a security interest under the financing statement, which shall be identified by file number. In other cases, whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations, or otherwise give value, the secured party must on written demand by the debtor send the debtor, for each filing officer with whom the financing statement was filed, a termination statement to the effect that he no longer claims a security interest under the financing statement, which shall be identified by file number. A termination statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record complying with 9-505(2), including payment of the required fee. If the affected secured party fails to file such a termination statement as required by this subsection or to send such a termination statement within 10 days after proper demand therefor, he shall be liable to the debtor for any loss caused to the debtor by such failure.

secured party, and the file number of the financing statement. A statement of release signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with 9-505(2), including payment of the required fee. Upon presentation of such a statement of release to the filing officer he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. The uniform fee for filing and noting such a statement of release shall be set pursuant to 9-503.

9-507. Information from filing officer.

(1) If the person filing any financing statement, termination statement, statement of assignment, or statement of release furnishes the filing officer a copy of the statement, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to the person.

(2) Upon request of any person, the filing officer shall issue a certificate showing whether there is on file on the date and hour stated in the certificate, any presently effective financing statement naming a particular debtor and any statement of assignment and, if there is, giving the date and hour of filing of each statement and the name and address of each secured party in the statement. For financing statements recorded on the system described in 9-503(9), the filing officer shall, upon request of any person, also furnish written information concerning the collateral described for any presently effective financing statement covering collateral described in 9-503(8). However, the information is not a part of the filing officer's certificate and may not constitute a complete description of the collateral covered by the financing statement. The uniform fee for a certificate and description of collateral must be set pursuant to 9-503. Upon request the filing officer shall furnish a copy of any filed financing statement or statement of assignment for a uniform fee of 50 cents per page.

(3) A computer printout from the system described in 9-503(9) constitutes the certificate of the secretary of state as to whether there is on file, on the date and hour stated on the printout, a financing statement covering the collateral described in 9-503(8). The fee for requesting a printout from the secretary of state must cover the cost of the printout. If a certificate is made on a requestor's own computer using telephone dial-up access, a fee commensurate with costs must be charged.

**9-508. Utility Financing Statement -- Place of Filing - Contents -
- Perfection of Security Interest.**

1) If filing is required under the Uniform Commercial Code, the proper place to file in order to perfect a security interest in personal property or fixtures of a transmitting utility or other

9-514. Filing of a Facsimile Copy.

(1) The secretary of state may treat a facsimile copy of a document that is required to be filed under this part and the signatures on the facsimile copy in the same manner as an original for purposes of this part. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy.

(2) A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document.

9-515. Removal of Improper or Fraudulent Liens.

(1) If a filing officer receives a complaint or has reason to believe that a lien submitted or filed with the filing officer's office is improper or fraudulent, the filing officer may reject the submission or remove the filing from existing files after giving notice and an opportunity to respond to the secured party.

(2) A person adversely affected by a lien that is determined to be improper or fraudulent by the filing officer may recover treble damages from the person responsible for submitting the lien.

PART 6. DEFAULT.

SUB-PART 1. DEFAULT AND ENFORCEMENT OF SECURITY INTEREST.

9-601. Default and Enforcement of Security Interest.

(1) When a debtor is in default under a security agreement:

- (a) A secured party has the rights and remedies provided in this Title and provided in the security agreement
- (b) The secured party may reduce the claim to judgment, foreclose, or enforce the security interest by any legal procedure.
- (c) If the collateral is documents, the secured party may proceed against the documents or the goods covered thereby.
- (d) A secured party in possession has the rights, remedies and duties provided in Section 9-207.
- (e) The rights and remedies referred to in this subsection are cumulative.

(2) After default, the debtor has the rights and remedies as provided in this Title and as provided in the security agreement.

9-604. Procedure if Security Agreement Covers Both Real And Personal Property or Fixtures.

(1) If a security agreement covers both real and personal property, a secured party may proceed:

- (a) As to the personal property without prejudicing any rights and remedies with respect to the real property; or
- (b) As to both the real and personal property in accordance with the rights and remedies with respect to the real property, in which case the other provisions of this part do not apply.

(2) If a security agreement covers goods that are or become fixtures, a secured party, subject to Section 9-604(3), may proceed under this part or in accordance with the rights and remedies with respect to real property, in which case the other provisions of this part do not apply.

(3) If a secured party with a security interest in fixtures has priority over all owners and encumbrancers of the real estate, the secured party may, on default, subject to the other provisions of this part, remove the collateral from the real estate. The secured party shall reimburse any encumbrancer or owner of the real estate that is not the debtor, for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of the obligation to reimburse.

9-605. RESERVED.

9-606. Collection Rights of Secured Party.

(1) If so agreed in the security agreement and in any event upon default the secured party may:

- (a) Notify an account debtor or the obligor on an instrument to make payment to the secured party whether or not the assignor was making collections on the collateral; and
- (b) Take control of any proceeds to which the secured party is entitled under 9-313.

2) (a) A secured party who by agreement is entitled to charge back uncollected collateral, or is entitled to full or limited recourse against the debtor, and who undertakes to collect from the account debtors or obligors, must proceed in a commercially reasonable manner.

(d) A secured party shall account to and pay a debtor for any surplus notwithstanding any agreement to the contrary, and, unless otherwise agreed, the obligor is liable for a deficiency. Recovery of a deficiency is subject to Section 9-619.

(3) The debtor or other obligor is liable for any deficiency after disposition of the collateral, only if its agreement so provides. Recovery of a deficiency under this subsection is subject to Section 9-619.

9-609. Persons Entitled to Notification Before Disposition of Collateral.

(1) The notification date is the earlier of either the date on which a secured party sends to the debtor and any secondary obligor, written notification of disposition, or the date on which the debtor and any secondary obligor waive the right to notification.

(2) A secured party shall send to a debtor and any secondary obligor reasonable written notification of disposition under Section 9-611, unless collateral is perishable or threatens to rapidly decline in value or is of a type customarily sold on a recognized market. In the case of consumer goods, no other notification need be sent. In other cases a secured party shall send written notification of disposition to:

(a) Any other person from whom the secured party has received, before the notification date, written notification of a claim of an interest in the collateral; and

(b) Any other secured party that, 30-days before the notification date, held a security interest in the collateral perfected by the filing of a financing statement that identified the collateral and was indexed under the debtor's name as of that date; and

(3) A secured party complies with the notification requirement specified in Section 9-609(2)(b) if:

(a) Not later than 30-days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in Section 9-610(2)(b); and

(b) Before the notification date, either the secured party did not receive a response to the request for information or the secured party received a response to the request for information and the secured party sent

(2) In a consumer secured transaction, a notification of disposition must contain the following information:

- (a) the amount that must be paid to the secured party to redeem the obligation secured under Section 9-616;
- (b) the amount that must be paid to the secured party to reinstate the obligation secured under Section 9-616; and
- (c) a telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

(3) A particular phrasing of the notification is not required. A notification that substantially complies with the requirements of this subsection is sufficient, even if it contains minor errors that are not seriously misleading.

(4) Notifications utilizing applicable Tribal forms are presumed to provide sufficient notice.

(5) Notification by the secured party is reasonable under this section constitutes steps reasonably required to inform another in the ordinary course if it is sent by certified mail to the most recent address provided by the debtor or another secured party as follows:

- (a) The address stated on the security agreement or other applicable loan document in the case of a debtor or on the written notice of claim in the case of another secured party; or
- (b) Such other address of which the secured party receives notice in writing from the debtor or other secured party prior to the time notification is sent to the most recent address previously given under subsection (3)(b)(i) or this subsection (3)(b)(ii).

9-612. Rights of Transferee of Collateral.

(1) After default, disposition of collateral by a secured party to a purchaser for value, transfers all of the debtor's rights in the collateral; discharges the security interest under which the disposition is made; and discharges any security interest or lien subordinate to which disposition is made.

(2) The purchaser at disposal takes free of all rights and interests of the debtor, secured party or subordinate interests even though the secured party fails to comply with the requirements of this Section or of any judicial proceedings;

- (a) In the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if the

- (b) Notice by the secured party is sufficient under this section and constitutes steps reasonably required to inform another in the ordinary course if it is sent by certified mail to the most recent address provided by the debtor or another secured party as follows:
- (i) the address stated on the security agreement or other applicable loan document in the case of a debtor or on the written notice of claim in the case of another secured party; or
 - (ii) such other address of which the secured party receives notice in writing from the debtor or other secured party prior to the time notification is sent to the most recent address previously given under subsection (2)(b)(i) or this subsection (2)(b)(ii).
- (c) If the secured party receives objection in writing from a person entitled to receive notification within 21 days after the notice was sent, the secured party must dispose of the collateral under 9-608. In the absence of such written objection the secured party may retain the collateral in satisfaction of the debtor's obligation.

9-615. Rights to Redeem Collateral.

At any time before a secured party has disposed of collateral or entered into a contract for its disposition under Section 9-608, or accepted collateral in full satisfaction of the obligation it secures under Section 9-614, the debtor, any secondary obligor, or any other secured party or lienholder may redeem the collateral by tendering fulfillment of all obligations secured by the collateral as well as the reasonable expenses and attorney's fees.

9-616. Reinstatement of Obligation Secured Without Acceleration.

(1) If 60% of the cash price has been paid in the case of a purchase money security interest in consumer goods or 60% of the principal amount of the obligation secured has been paid in the case of another consumer secured transaction, a debtor or a secondary obligor that is a consumer obligor may cure a default consisting only of the failure to make a required payment and may reinstate the secured obligation without acceleration by tendering the unpaid amount of the secured obligation due at the time of tender, without acceleration, including charges for delinquency, default, or deferral, and reasonable expenses and attorney's fees.

(2) A tender of payment under Section 9-616(1) is ineffective to cure a default or reinstate a secured obligation unless made before the later of:

conformity with reasonable commercial practices among dealers in the type of property sold he has sold in a commercially reasonable manner. The principles stated in the two preceding sentences with respect to sales also apply as may be appropriate to other types of disposition. A disposition which has been approved in any judicial proceeding or by any bona fide creditors' committee or representative of creditors shall conclusively be deemed to be commercially reasonable, but this sentence does not indicate that any such approval must be obtained in any case nor does it indicate that any disposition not so approved is not commercially reasonable.

9-619. Action in Which Deficiency or Surplus is at Issue.

In an action in which the amount of a deficiency or surplus is in issue the following rules apply:

(1) A secured party need not establish compliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue; in which case the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with the applicable provisions of this Code.

(2) If a secured party fails to meet the burden of establishing that collection, enforcement, disposition, or acceptance was conducted according to the provisions of this Code, the following rules apply:

- (a) In a consumer secured transaction for which no other collateral remains to secure the obligation, neither the debtor nor a secondary obligor is liable for a deficiency;
- (b) In other cases, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorney's fees exceeds the greater of the actual proceeds of the collection, enforcement, disposition, or acceptance or the amount of proceeds that would have been realized had the non-complying secured party proceeded in accordance with the provisions of this part. The amount that would have been realized is equal to the sum of the secured obligation, expenses, and attorney's fees unless the secured party meets the burden of establishing that the amount is less than that sum.

9-620. Attorney's Fees Are Reciprocal.

If the secured party would have been entitled to attorney's fees as the prevailing party, the court shall award to debtor or obligor prevailing on the issue, the costs of the action and reasonable attorney's fees.

(b) That the personal property being attached, is non-trust personal property belonging to the debtor; and

(c) That the creditor has reasonable cause to believe that the specific personal property sought to be attached may be lost, damaged, vandalized or removed from the reservation prior to payment of a final judgment, so as to jeopardize the ability of the creditor to collect on any judgment that may later be obtained.

(2) If the Tribal Judge is satisfied after reviewing the Complaint and Affidavit, the judge may issue an Order of Attachment of the designated personal property. The Bureau of Indian Affairs Police or Tribal Police shall be given the Order of Attachment and the police shall seize any property identified by the order. Said property shall be kept in storage under the control of the police. Said personal property shall be held by the police pending any further order of the Tribal Court.

(3) An Order of Attachment shall not be issued until the creditor has filed with the clerk a surety bond or cash bond in the sum of at least \$500 or 5% of the value of the property to be seized, which ever is less. Said bond shall be necessary in the event that the Order of Attachment was wrongfully issued and the debtor was damaged, or in the event the debtor prevails when final judgment is rendered.

(4) The debtor shall be served with the Order of Attachment at the time the police seize the personal property of the debtor. If the debtor is not available or present at the time the personal property is seized, said Order of Attachment shall be posted in a conspicuous place on the door of the debtor's house, mobile home or residence and a copy mailed to the debtor's last known address. The service shall be documented for court records.

(5) At any time following the issuance of an Order of Attachment, the debtor shall be entitled to challenge the validity of the issuance of that writ. The debtor may contest the Writ of Attachment by filing a Response to Writ of Attachment. At the time that the Response is filed with the Clerk of the Tribal Court, the court shall set a hearing date and notice of said hearing shall be served on the creditor at least 5-days before to that hearing. At the hearing the debtor must establish by a preponderance of the evidence that:

a; (i) the specific personal property sought to be attached would not be likely to be lost, damaged, vandalized or removed from the reservation prior to final judgment; or

(ii) that said loss, damage, vandalism or removal of property would not jeopardize the ability of the creditor to collect on a judgment if one should subsequently be obtained;