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CHAPTER 4 - TRIBAL COURT

4.1 SECTION 1- GENERAL

4.1.1 There is hereby established a Tribal Court vested with jurisdiction over all violation of this Code.

4.1.2 The Court shall consist of a Chief Judge, two (2) Associate Judges, a Reserve Judge, and magistrates, as may be appointed by the Tribal Council. The Reserve Judge shall hear cases in the event that the Chief Judge and Associate Judges are unable to preside over a case, for whatever reason. Magistrates of the Red Cliff Tribal Court shall only preside in pre-trial hearings and forfeiture cases in which the maximum penalty does not exceed \$250.00.

4.1.3 Judges shall serve for an indefinite term and shall not be subject to removal by the Tribal Council except upon 2/3 vote and only for cause of illegal conduct or physical or mental inability to carry out the duties of his office.

4.1.4 The Red Cliff Tribal Court shall use the procedures outlined in this Red Cliff Code of Laws, if the Red Cliff Code of Laws is silent on the procedures for certain actions, the Red Cliff Tribal Court may adopt such rules of procedure from any federal, state or other tribal court rules of procedure as the Red Cliff Tribal Court deems appropriate on a case-by-case basis.
(12/2/96D)

4.2 SECTION 2- PROSECUTOR

4.2.1 The Red Cliff Tribal Council shall designate a person or persons to represent the Red Cliff Band in prosecuting cases before the court.

4.2.2 The Prosecutor shall serve for a term of 1 year, and may be reappointed.

4.2.3 The Prosecutor may be removed for cause by the Tribal Council.

4.2.4 The Prosecutor shall have the power to issue complaints on the basis of his own investigation or on the basis of information furnished by enforcement officers, or individual members or non-members.

4.2.5 The Prosecutor shall have discretion to decline to prosecute an action where he shall find that there is not sufficient justification for the complaint.

4.3 SECTION 3- COURT CLERK

4.3.1 The Tribal Council shall designate a person to serve as Court Clerk.

4.3.2 The Clerk's term and conditions of office shall be the same as those prescribed for Prosecutor.

4.3.3 The Clerk may be required to furnish a bond satisfactory to the Tribal Council.

4.4 SECTION 4- DUTIES OF COURT CLERK

4.4.1 The duties of the Court Clerk shall be as follows:

4.4.2 Maintain the court schedule.

4.4.3 Keep all case files safe and secure, and file accurately and promptly all relevant material, such as notices, affidavits, pleadings, written court orders and judgments.

4.4.4 Promptly notify parties of all relevant court actions, sending copies where such action is by written court order.

4.4.5 Attend all court hearings.

4.4.6 Where requested by a judge, prepare a written summary of a trial or other hearing.

4.4.7 Keep a careful account of all monies received and disbursed, and submit copies of such accounts together with all monies retained to the Tribal Treasurer at the end of each month.

4.5 SECTION 5- FORFEITURE ACTION

- 4.5.1 All actions to recover forfeitures for violations are civil actions in the name of the Red Cliff Tribal Court.
- 4.5.2 A forfeiture action may be commenced either by issuance of a violation notice or by a complaint and summons.
- 4.5.3 Service upon a suspected violator of a violation notice by an enforcement officer in connection with a violation is adequate process to give the Red Cliff Tribal Court jurisdiction over the person, upon the filing of the violation notice with the Court and provided the violation notice states which regulation have been violated and the time and place that a hearing will occur.
- 4.5.4 Any person who have received a citation from a Red Cliff Enforcement Authority, as defined in RCCL Chapter 4, section 4.28, who fails to appear at the time set on the citation, or the time set by subsequent postponement, of which the defendant has been noticed, may be considered in default and the Court may determine that the person has entered a plea of no contest and submitted to a civil forfeiture, plus cost, and penalty assessment, not to exceed the amount of deposit listed on the citation. (10/01/01 I)

4.6 SECTION 6- COMMENCEMENT OF ACTIONS

- 4.6.1 All actions for breach of contract or tort or such other actions as may be brought under authority of this Code, may be commenced by the filing of a complaint with the Court and the issuance of a summons.
- 4.6.2 No complaint shall be valid unless signed by the complainant before a Judge or Court Clerk.
- 4.6.3 In all cases except those in which the Red Cliff Band of Lake Superior Chippewa Indians is the Plaintiff, there shall be a filing fee of \$15.00.

- 4.6.4 Upon the filing of the complaint with the Clerk, the Clerk will sign and serve a summons, directing the defendant to appear before the Court at a date, time and place specified.
- 4.6.5 The date set for a hearing in the summons or violation notice shall not be more than 31 days from the date of service.
- 4.6.6 Except as otherwise provided, the violation notice or summons and a copy of the complaint shall be served on the defendant by personal service, or by delivery to a member of the defendant's family who is at home at the defendant's residence.
- 4.6.7 Any person, 18 years of age or older, not a party to the action, may make personal service.
- 4.6.8 After service is made, the server shall execute an affidavit of service, which shall be filed with the Clerk and placed in the case file, where it shall constitute proof of personal service.
- 4.6.9 The affidavit shall state the date, time and place of service, the person served and the official status of the server, if any.
- 4.6.10 Any natural or corporate person doing business or employing person on the Reservation, and any non-member or non-resident member who enters the Reservation, shall be deemed to have irrevocably appointed the Secretary of the Tribal Council as his or her true lawful attorney upon whom may be served any legal process in any action or proceeding arising from the enforcement of this Code.
- 4.6.11 In all cases where the defendant is not a resident upon the Reservation or cannot be found thereon, service may be made by the Clerk's mailing a copy of the summons and complaint to the defendant's last known address by certified mail.

4.6.12 The Clerk shall retain the postal receipt and place it in the case file, where it shall constitute evidence of service.

4.6.13 In all cases where service by mail is employed or personal service outside the Reservation, the Secretary of the Tribal Council shall be served with the original summons and a copy of the complaint.

4.7 SECTION 7- DEPOSITS

4.7.1 Those accused of violation may be permitted to make a case deposit, in lieu of a court appearance, based upon a schedule of deposits adopted by the Tribal Council.

4.8 SECTION 8- STIPULATIONS OF NO CONTEST

4.8.1 A defendant who had made a deposit may stipulate to a plea of no contest, which, if accepted by the Court, shall result in forfeiture no greater than the amount of the deposit.

4.8.2 Such stipulation may be made by signing the violation notice in the appropriate place, or by written notification to the Court Clerk.

4.8.3 If the Court declines to accept the no contest plea, it shall order that a summons be issued for the defendant to appear.

4.8.4 The defendant may move to withdraw the no contest plea by notifying the Court in writing at least 2 days prior to the scheduled court appearance, or by appearing in court, at the time specified in the violation notice or summons.

4.9 SECTION 9- COURT COSTS

4.9.1 In addition to such other costs as may be assessed when a trial is had, defendants found guilty in forfeiture action shall be subject to the following cost:

4.9.2 The suit tax in an action shall be \$5.00.

- 4.9.3 The Clerk's fee in an action shall be \$5.00.
- 4.9.4 The schedule of deposits shall include the cost set.

4.10 SECTION 10- MONIES/FEES

- 4.10.1 All forfeitures collected pursuant to this Code shall be deposited by the Tribal Treasurer in a tribal account earmarked for promoting the policies and administration of this code.
- 4.10.2 All monies received as filing fees or court costs shall be deposited by the Tribal Treasurer in a tribal account earmarked for the administration of courts.

4.11 SECTION 11- CONFISCATION

- 4.11.1 Enforcement officers may confiscate all fish and game in the possession of a person they are citing for violation of the Fishing, Hunting, Trapping, of Endangered Species provisions of this code, and which they suspect to have been taken as a result of a violation.
- 4.11.2 Where feasible, such confiscated fish, and game other than alive, shall be donated to elderly feeding, and otherwise shall be sold, and the amount received deposited with the Court Clerk.
- 4.11.3 Enforcement officers may also confiscate fishing, hunting, trapping, and other equipment involved in a violation, and hold such equipment as evidence for trial.
- 4.11.4 Such equipment shall be returned to the defendant if the Courts shall find that he or she did not commit the violation.
- 4.11.5 If the defendant is found to have committed the violation, or enters a plea of no contest which is accepted by the Court, the confiscated equipment shall be returned when the forfeiture judgment is satisfied.

4.11.6 After a forfeiture judgment has remained unsatisfied for 15 days, the Court may order the equipment sold to satisfy the judgment, unless a prior arrangement for delayed payment has been made.

4.12 SECTION 12- SUBPOENA POWER

4.12.1 The Court shall have the power to issue subpoena to compel the attendance of witnesses and the production of physical evidence.

4.12.2 A judge shall sign such subpoenas.

4.12.3 Service of the subpoena shall be prescribed on sec. 4.6, except as otherwise provided.

4.12.4 The server shall serve a copy of the subpoena and return the original to the Clerk, to be placed in the file.

4.12.5 The server shall note the date, time and place of service on the back of the original, and sign his name, which signed notation shall constitute proof of service.

4.12.6 Absent a justification satisfactory to the Court, failure to obey a subpoena shall constitute contempt.

4.13 SECTION 13- CONTEMPT POWER

4.13.1 The Court shall exercise the inherent power of a court to enforce due regard for its dignity and lawful orders by finding those who disregard them to be in contempt.

4.13.2 Where the Court shall determine that a person has willfully disregarded a subpoena, injunction or other lawful order of the Court, the Court may find that the person is in civil contempt and order the person to forfeit a stated amount for each day he continues to forfeit a stated amount for each day he continues to disregard the order, or order the person to be jailed until he purges himself of the contempt.

4.13.3 In no case shall the Court order a forfeit greater than \$5,000 per day, nor shall any contemnor be jailed longer than 90 days on the basis of a single contempt order.

4.14 SECTION 14- WARRANTS

4.14.1 Judges of the Court shall have the power to issue warrants for the arrest of persons, and for the search and seizure of premises and property.

4.14.2 An arrest warrant may be issued only after a violation notice, written complaint or contempt order has been filed.

4.14.3 In addition to a judge's signature, an arrest warrant shall contain the name or description of the offense charged, and the date of issuance of the warrant.

4.14.4 No search warrant shall be issued except on probable cause that a search will discover:

- a) Property taken, or held in possession, in violation of this Code; or
- b) Property which has been, is being , or is about to be used to commit a violation; or
- c) Property which constitutes evidence of a violation.

4.14.5 The search warrant shall state the name or description of the person, property or premises to be searched, a description of the articles or property to be seized, the date of issuance and the time limit within which the warrant is to be executed.

4.14.6 The search warrant shall be returned to the Clerk within the prescribed time limit, but in no case shall any search warrant be valid after 3 days from the date of issuance.

4.14.7 The enforcement officer making application for a search warrant shall support his application with

an affidavit stating the grounds for probable cause.

4.14.8 Only enforcement officers shall execute warrants.

4.14.9 Interference with the execution of a lawful warrant shall constitute contempt.

4.15 SECTION 15- AFFIDAVITS

4.15.1 All affidavits required by this Code, by rule or order of the Court, or by regulations adopted pursuant to this code, shall consist of a written statement, sworn to and signed in the presence of a Tribal or state authorized notary, who shall subscribe his name, and affix his seal beneath the signature of the affiant.

4.16 SECTION 16- SEARCHES

4.16.1 Enforcement officers may conduct searches upon warrant, as provided in sec. 4.14.

4.16.2 No enforcement officer shall make a search without warrant unless the search is:

- a) Incident to making a lawful arrest; or
- b) Consented to; or
- c) The enforcement officer has probable cause to believe that violation has been committed, is being committed, or is about to be committed, has detained the suspect for temporary questioning, or to issue a violation notice, and reasonably suspects that he or another is in danger of physical injury.

4.17 SECTION 17- ARRESTS

4.17.1 Enforcement officers may make arrests in connection with violations, either upon warrants, or without warrants in certain circumstances.

4.17.2 A person may be arrested without a warrant when the arresting officer has probable cause to

believe that the person is committing or has committed a violation, and:

- a) The person refuses to accept a violation notice or to make a deposit; or
- b) The person refuses to identify himself or herself satisfactorily, or the officer has reason to believe that the person is supplying false identification; or
- c) Arrest is necessary to prevent imminent bodily harm to the arresting officers or another.

4.17.3 In all cases the officer shall bring the person arrested before a judge without unnecessary delay.

4.18 SECTION 18- EXEMPTION FROM LIABILITY

4.18.1 Red Cliff Tribal Council members and other Red Cliff Tribal Officials shall be exempt from liability for acts within their official capacity and within the scope of their authority, (3/3/91 G)

4.18.2 Members of the Court, and each enforcement officer, in the performance of his or her official duties, shall be exempt from any or all liability for acts done or property destroyed by authority of law. (3/3/97 G)

4.19 SECTION 19- BURDEN OF PROOF

4.19.1 In all actions under this Code, the complainant must convince the trier of fact of every element of the violation by evidence that is clear, satisfactory and convincing.

4.20 SECTION 20- TEMPORARY RESTRAINING ORDERS AND INJUNCTIONS

4.20.1 TEMPORARY RESTRAINING ORDERS. A written complaint must be filed with the Court before a temporary restraining order may be issued. A temporary restraining order may be granted only where:

- a) The applicant shows to the court clear, satisfactory and convincing evidence that immediate and irreparable injury, loss or damage will result to the applicant if the temporary restraining order is not granted;
- b) The adverse party has been given notice that the applicant has applied to the court for a temporary restraining order. The notice requirement contained in this section can only be waived where the applicant or his/her advocate certifies in writing to the court his/her efforts, if any, to provide the notice and the reasons supporting the claim that notice should not be required; and
- c) The applicant provides to the court a bond or other such security as the court deems proper to protect the interests of the adverse party and for payment of such costs and damages as may be incurred by any party found to have been wrongfully enjoined or restrained. No such security shall be required of the Red Cliff Band or of any officer of the Band acting in his/her official capacity.

4.20.2 Every injunction and/or temporary restraining order shall:

- a) Set forth, in writing, the reasons for its issuance;
- b) Be specific in its terms;
- c) Describe with specificity the act or acts that are to be restrained;
- d) Define the injury and state why it is irreparable;
- e) State the date and hour of its issuance;
- f) If granted without notice, state why it was granted without notice;

g) Expire at a definite time, not to exceed ten calendar days, unless extended for good cause shown, or by consent of the adverse party.

4.20.3 On two days notice to a party who obtained a temporary restraining order without notice, or on such shorter notice as the court may prescribe, the adverse party may appear and move that the order be dissolved or modified.

4.20.4 INJUNCTIONS. The Red Cliff Tribal Court may issue permanent injunctions ordering the defendant to perform or restrain from certain acts only after a hearing with the notice to all parties affected, and upon a written complaint, filed with the court at least five calendar days prior to the hearing that states with specificity the act or acts sought to be restrained and the reasons that support the relief sought. The court shall only grant an injunction after considering the following factors:

- a) The significance of the threat of irreparable harm to plaintiff if the injunction is not granted;
- b) The balance between this harm and the injury that granting the injunction would inflict on the defendant; and
- c) The public interest.

4.20.5 In granting an injunction, the court shall:

- a) Set forth, in writing, the reasons for its issuance;
- b) Be specific in its terms;
- c) Describe, with specificity, the act or acts that are to be restrained;
- d) Define the injury and state why it is irreparable; and

e) State the date and hour of its issuance, and when it expires, if applicable.

4.20.6 PENALTY. Whoever violates a temporary restraining order or injunction issued under this section shall forfeit an amount set by the court, no to exceed \$5,000. Each day that a party is in violation of such order or injunction shall be considered a separate violation.

4.21 SECTION 21- REVOCATIONS

4.21.1 Where any violation involves the misuse of a license or permit, the Court shall have power to order revocation or suspension of such license or permit.

4.21.2 Where a license or permit issued pursuant to a chapter of this Code is revoked, the violator shall be barred from receiving any other license or permit under that Chapter for at least 1 year, except where the Code shall provide otherwise.

4.21.3 The Court may recommend to the Tribal Council that a person be excluded from the Reservation or denied the privilege of doing business or other privileges beyond those provided in this Code. Such recommendation shall be made only when the person has committed 3 violations within a 24-month period, at least 2 of which were serious enough to require forfeitures of \$100 or more.

4.22 SECTION 22- MAXIMUM FORFEITURES

4.22.1 Where not otherwise provided, the maximum forfeiture for any first violation shall be \$5,000.

4.22.2 Immobilization of Vehicles for Unpaid Fines and/or Forfeitures. In addition to any other remedy permitted by this Code, in all traffic-related matters where a fine or forfeiture remains unpaid for a period exceeding ninety (90) days under circumstances where satisfactory arrangements for repayment have not been made with the Court or where payment arrangements made with the Court have been breached, the Court may

order that the motor vehicle used during the underlying offense forming the basis for the fine or forfeiture be immobilized until such time as the fine or forfeiture is paid in full. In addition, where appropriate the Court may order that any other vehicles owned by the Defendant be immobilized until such time as the fine or forfeiture is paid in full, at the discretion of the Court. In all such cases where the Court orders that a vehicles(s) be immobilized, the Court shall impose an additional forfeiture against the Defendant in an amount equal to the cost of the immobilization device. Tampering with an immobilization device resulting from an Order of the Court under this section is prohibited; any person who violates this section shall be subject to a fine not to exceed \$5,000. This section shall be subject to the restrictions contained in sec. 4.22.3.

4.22.2 Special Provision for Vehicles Not Owned by Defendant. In all instances where the motor vehicle used during the underlying offense forming the basis for the fine or forfeiture is not owned by the Defendant, the Court may not order the motor vehicle immobilized except upon hearing and notice to the owner of the vehicle at least thirty (30) calendar days in advance of the proposed immobilization order. At the hearing the Court may take testimony and evidence concerning the facts and circumstances surrounding the non-owner's use of the vehicle's owner (1) was aware of Defendant's use of the vehicle; (2) Defendant was using the vehicle with Owner's permission; and (3) the Owner of the vehicle knew or should have known that the Defendant had unpaid fines and forfeitures with the Court.

4.23 SECTION 23- IRREGULARITIES

4.23.1 Any violation notice, complaint, summons, warrant, or similar document whose matter does not literally conform to the requirement prescribed in this Code, shall not thereby be rendered invalid if the matter contained in the

document substantially achieves the purposes of the Code prescriptions.

- 4.23.2 However, no such document shall be valid unless it contains such signature or signatures as are prescribed by this Code.

4.24 SECTION 24- ADVOCATES

- 4.24.1 A party to an action shall have the right to be represented by an advocate at all hearings, at his own expense.

- 4.24.2 No advocate shall be admitted to practice before the Red Cliff Tribal Court unless he has successfully passed a standard written examination given by the Tribal Court.

- 4.24.3 The examination shall test the advocate's knowledge of Indian Law and this Code of Laws.

- 4.24.4 Passing the examination entitles the advocate to be a member of the Red Cliff Bar Association and to practice before the Red Cliff Tribal Court.

- 4.24.5 The Court may provide an advocate for any party to the action who in the Court's determination is unable to afford an advocate.

4.25 SECTION 25- JUVENILE COURT

- 4.25.1 A juvenile or minor or child is any Tribal member or person entitled to be a Tribal member who has not reached the age of 18 years.

- 4.25.2 Jurisdiction of the Tribal Court includes the authority to appoint guardians for minors, subject to every procedural safeguard enumerated in this Chapter 4, and also subject to the following regulations:

- 4.25.3 A child can be brought before the Court by the filing of a petition on behalf of the child by any person. The petition shall state the reason that the child is in need of the appointment of a guardian.

- 4.25.4 Whenever a child is brought before the Court, the Court must immediately consult with Tribal Social Workers and secure their professional opinion concerning the matter. The best interest of the child is the overriding issue.
- 4.25.5 The Court must encourage and assist in solving the matter on an informal basis; that is without issuing a court order.
- 4.25.6 The Court may order the appointment of a guardian for the child if the Court determines that:
- a) The child is abandoned, neglected, abused, or otherwise in need of protection from its current environment.
 - b) The natural parents consent to the appointment of a guardian or have not responded to adequate notice.
- 4.25.7 In order to accomplish the appointment of a guardian, the Court must issue a written order stating the grounds for the appointment.
- 4.25.8 Upon the issuance of an order, the child becomes a ward of the Court; thereafter the Court shall retain exclusive jurisdiction notwithstanding the residence or domicile of the child.
- 4.25.9 When in the best interest of the child who is a ward of the Court, the Court may appoint new or different guardians for the child or remove its protection of the child by rescinding a prior order.

4.26 SECTION 26- LIMITATIONS ON ACTIONS

- 4.26.1 All actions or proceedings initiated under this Code shall be commenced without thirty six (36) months of the date of the event or occurrence-giving rise to a cause of action under this Code, or be forever barred.

4.27 SECTION 27- FULL FAITH AND CREDIT

4.27.1 The Red Cliff Tribal Court shall grant full faith and credit to the judicial records, orders and judgments of the courts of the State of Wisconsin and to the acts of other governmental entities of the State of Wisconsin.

4.28 SECTION 28- ENFORCEMENT AUTHORITIES

4.28.1 Red Cliff Law Enforcement (meaning the Red Cliff Police Department) is authorized to enforce all provisions of the on reservation Red Cliff Code of Laws.

4.28.2 Red Cliff Wardens are authorized to enforce all of the on-reservation code and the off-reservation code of the Red Cliff Code of Laws.

4.28.3 Great Lakes Indian Fish and Wildlife Commission Wardens are authorized to enforce the off-reservation code in the ceded territory. Great Lakes Indian Fish and Wildlife Commission Wardens are also authorized to enforce ordinances pertaining to Michigan water of Lake Superior.

4.28.4 Bayfield Public School attendance officers or their designee are authorized to enforce Chapter 33 of the Red Cliff Code of Laws.

4.28.5 Nothing herein shall prohibit any law enforcement officer from enforcing any provision of the Red Cliff Code of Laws in accordance with any cross-deputization agreement.

4.28.6 The Wisconsin State Patrol and the Bayfield County Sheriff's Department are authorized to issue citations to any person who violates Chapter 14 - Red Cliff Traffic Code. The citations shall be issued into the Red Cliff Tribal Court in accordance with the policies and procedures of the Red Cliff Tribal Court. (7/4/05H)

4.29 SECTION 29- PERSONNEL APPEALS

4.29.1 The Red Cliff Tribal Court shall have jurisdiction and authority to decide appeals from the final decision of the Red Cliff Personnel Selection Committee in connection with grievances

initiated under the Red Cliff Personnel Policies and Procedures. Nothing in this section shall be interpreted to provide any right to appeal a hiring decision by the Red Cliff Tribal Council.

- 4.29.2 The trial court shall accept the facts as developed at the Personnel Selection Committee hearing, and shall not decide contested factual issues unless the decision of the Personnel Selection Committee was clearly erroneous. Issues not raised before the Personnel Selection Committee shall not be heard by the trial court. The trial court shall not decide issues not raised by the parties.
- 4.29.3 Appeals commenced under this section shall comply with the requirements of this chapter, including, but not limited to the rules governing Commencement of Actions (section 6), Subpoena Power (section 12), and Burden of Proof (section 19).
- 4.29.4 In all actions under this section, the Tribe shall be represented by either the Personnel Manager, or another representative of the Tribal Administration. For appeals under this section, the requirements of this Chapter 4, section 4.24 shall not apply.
- 4.29.5 Notwithstanding this Chapter 4, Section 4.26, all appeals from final decisions of the Personnel Selection Committee initiated under this Chapter must be commenced within ten (10) business days from the receipt of the Personnel Selection Committee's written decision by the Appellant or be forever barred. **(8/4/03c)**