

TITLE I

GENERAL PROVISIONS CODE

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TITLE I

GENERAL PROVISIONS CODE

Chapter 1. ESTABLISHING AUTHORITY AND COURTS

1-1-1. Constitutional Authority [*As amended by Ord. DOI 3(98)*]

This Law and Order Code of the Northern Cheyenne Tribe, consisting of this Title and all other Titles hereof (hereinafter "Law and Order Code" or "Code") is adopted pursuant to the authority vested in the Northern Cheyenne Tribal Council under Article IV, Sections 1(h), (i), (k), (m), (o), (p), (q) and (n) of the Constitution of the Northern Cheyenne Tribe.

1-1-2. Prior Inconsistent Ordinances and Resolutions Repealed

Any and all ordinances, resolutions and policies inconsistent with or in conflict with or contrary to the spirit and purpose of the contents of this Code are hereby repealed and have no effect.

1-1-3. Amendments, Modifications, Additions to Any Code [*As amended by Ord. DOI 3(98)*]

The Code may be amended by duly adopted resolutions or ordinances of the Tribal Council. However, as provided in section 1A-19-1 of Title IA (Separation of Powers Code) of this Law and Order Code, Title IA may be amended, repealed or suspended only by two-thirds vote of the Tribal Council. The adoption of Tribal ordinances and resolutions which effect modifications, additions or deletions to this Code shall be codified and incorporated in a manner consistent with the numbering and organization of this Code.

1-1-4. Courts Established [*As amended by Ord. DOI 3(98)*]

There is hereby established the Northern Cheyenne Court, constituting the Judicial Branch of Tribal government, comprised of the Trial Court, Appellate Court, Constitutional Court, and Office of the Court Clerk, as described in Chapter 3 of Title IA of this Code.

The terms "Northern Cheyenne Reservation Judicial System," "Northern Cheyenne Reservation Court," "Reservation Court," and the like, which may at times appear in other Titles of this Law and Order Code, shall be construed as being synonymous with the Northern Cheyenne Court or Judicial Branch, as described in the foregoing provisions of this section 1-1-4.

1-1-5. Availability of Code [*As amended by Ord. DOI 3(98)*]

Copies of this Code and any amendments shall be kept available for public inspection during regular business hours at the office of the Court Clerk.

1-1-6. Civil Rights Guarantees [*Added by Ord. 16(88)*]

The following civil rights are guaranteed to all persons within the exterior boundaries of the Northern Cheyenne Reservation. The various institutions within the exterior boundaries of the [*cont'd on p. I-3A*]

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Northern Cheyenne Reservation shall not (1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances; (2) violate the right of the people to be secure in their persons houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;

- (3) subject any person for the same offense to be twice put in jeopardy;
- (4) compel any person in any criminal case to be a witness against himself;
- (5) take any property for a public use with just compensation;
- (6) deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witness in his favor, and at his own expense to have the assistance of counsel for his defense;
- (7) require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of twelve (12) months or a fine \$5,000, or both;
- (8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;
- (9) pass any bill of attainder or ex post facto law; or
- (10) deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

Chapter 2. JURISDICTION

1-2-1 Trial Court [*As amended by Ord. DOI 3(98)*]

- A. The Trial Court is a trial-level court of general civil jurisdiction, exercising the full reach of the Tribe's lawful civil jurisdiction as described in section 1A-14-1.
- B. The Trial Court is also a trial-level court of general criminal jurisdiction, exercising the full reach of the Tribe's lawful criminal jurisdiction as described in section 1A-14-2.

1-2-2 Appellate Court [*As amended by Ord. DOI 3(98)*]

The Appellate Court has exclusive jurisdiction to hear appeals and other authorized requests for appellate review of Trial Court decisions as described in section 1A-5-1.

1-2-3. Constitutional Court [*As amended by Ord. DOI 3(98)*]

- A. The Constitutional Court has exclusive jurisdiction to hear Constitutional Claims that legislative enactments of the Tribal Council are unlawful, as provided in section 1A-6-3.
- B. The Constitutional Court has exclusive authority to confirm the Automatic Removal of Judges as provided in section 1A-17-2, and to hear Complaints for Removal of Judges as provided in section 1A-17-3.
- C. In addition, if explicitly authorized by the Tribal Council, the Constitutional Court may hear other claims, as provided in section 1A-6-11.

Chapter 3. SOVEREIGNTY

1-3-1. Adoption by Reference Not a Waiver of Sovereign Power of the Northern Cheyenne Tribe [*Amended by Ord. DOI 3(98)*]

The adoption of any law, code or other documents by reference into this Code shall in no way constitute a waiver or cession of any sovereign power of the Northern Cheyenne Tribe to the jurisdiction whose law or code is adopted or in any way diminish such sovereign power, but shall result in the law or code thus adopted becoming the law of the Northern Cheyenne Tribe.

1-3-2. Sovereign Immunity [*Amended by Ord. DOI 3(98)*]

Except as may be required by federal statute or regulation or the Constitution and By-Laws of the Northern Cheyenne Tribe, or as explicitly and specifically waived by a resolution or ordinance of the Northern Cheyenne Tribal Council, the Northern Cheyenne Tribe, including all branches, divisions, departments, agencies and other governmental or proprietary instrumentalities of the Tribe (hereinafter "Tribe or its Instrumentalities") shall be immune from suit in any civil action. In addition, the officers, Councilpersons, board members, directors, executives and other employees and agents of the Tribe or its Instrumentalities (hereinafter "Tribal Representatives") shall be immune from suit or any liability arising from the performance of their official duties. No provision of this Law and Order Code shall be construed as waiving any such immunity unless the provision explicitly and specifically sets forth such a waiver.

Chapter 4. LIMITATIONS ON ACTIONS

1-4-1. Civil Actions

Unless otherwise specifically provided in the Code, the following limitations on the bringing

of civil actions will apply:

- A. Any action against the Tribe or its Instrumentalities, or against Tribal Representatives arising from the performance of their official duties, must be commenced within one year of the date the cause of action accrued. [*Amended by Ord. DOI 3(98)*]
- B. Any other action must be commenced within three years of the date the cause of action accrued, provided, however, that any cause of action based on fraud or mistake shall not be deemed to have accrued until the aggrieved party has discovered or [*cont'd on p. I-5*]

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reasonably should have discovered the facts constituting the fraud or mistake.

1-4-2. Criminal Actions.

- A. A prosecution for any offense must be commenced within the period specified:

Class A Offenses - 0-5 years

Class B Offenses - 0-2 years

Class C Offenses - 0-1 year

- B. The period of limitations does not run during any period in which the offender is not physically located on the Reservation or when a prosecution is pending in another jurisdiction against the offender for the same conduct.

Chapter 5. PRINCIPLES OF CONSTRUCTION

1-5-1. When Applied.

- A. The following principles of construction will apply to all of the Code unless a different construction is obviously intended:
1. Masculine words shall include the feminine, and singular words shall include the plural, and vice-versa.
 2. Words shall be given their plain meaning and technical words shall be given their usually understood meaning where no other meaning is specified.
 3. Whenever a term is defined for a specific part of this Code, that definition shall apply to all parts of this Code unless contrary meaning is clearly indicated.
 4. This Code shall be construed as a whole to give effect to all its parts in a logical, consistent manner.
 5. If any provisions of this Code or the application of any provision to any person or circumstance is held invalid, the remainder of this Code shall not be affected thereby and to this end the provisions of this Code are declared to be severable.
 6. Any typographical errors or omissions shall be ignored whenever the intended meaning of the provision containing the error or omission is otherwise reasonably certain to the Court.
 7. Any other issues of construction shall be handled in accordance with generally accepted principles of

construction giving due regard to the underlying principles and purposes of this Code.

Chapter 6. CARE OF BONDS, FINES AND FEES

1-6-1. Deposit and Disposition of Bonds, Fines and Civil Fees [As amended by Ord. DOI 3(98)]

- A. All monies collected for fines imposed for the commission of offenses against ordinances passed by the Tribal Council, or imposed under this Code shall be in the nature of an assessment for the support of the Judicial Branch. Such expenses include but are not limited to the payment of fees provided for in this Code or ordinances, to jurors and to witnesses answering subpoenas, to counselors and court officials, and other expenses of the Judicial Branch.
- B. The fines assessed shall be deposited by the Court Clerk with the Tribal Treasurer and shall, by said Treasurer, be deposited in the appropriate account of the Tribe. The Tribal Treasurer shall draw checks from such funds in accordance with the existing budget.
- C. The Tribal Treasurer and the Court Clerk shall keep an accounting of all such deposits and withdrawals.
- D. Complementary provisions regarding Judicial Branch budgeting, fund raising and remittance of revenues are set forth in Chapter 18 of Title IA.

Chapter 7. NORTHERN CHEYENNE COURT BAR ASSOCIATION RULES

1-7-1. General

- A. Lay Counselors and Professional Attorneys shall be deemed officers of the Court for purposes of their representation of a party and shall be subject to the disciplinary authority of the Court in all matters related to their representative capacity.
- B. Any person appearing as a Lay Counselor or as an Attorney shall be subject to the same ethical obligations of honesty and confidentiality towards his client and the Lay Counselor/Attorney-client testimonial privileges shall apply in appropriate circumstances.
- C. The Northern Cheyenne Tribe shall have no obligation to provide or pay for such Lay Counselors and Professional Attorneys and such obligation shall rest entirely with the person desiring such a counselor or attorney. [As amended by Ord. DOI 3(98)]

1-7-2. Right to Be Represented by a Lay Counselor or Professional Attorney.

Any person appearing as a party in any civil or criminal action shall have the right to be represented by a Lay Counselor or Professional Attorney of his own choice and at his own expense; provided, however, that neither the Northern Cheyenne Tribe nor Reservation has an obligation to provide or pay for such a Lay Counselor or Attorney; provided further, that any such Lay Counselor or Attorney appearing before the Courts of the Northern Cheyenne Reservation shall have first obtained admission to practice before such Courts in accordance with the procedures set forth herein.

1-7-3. Eligibility for Admission.

- A. Any person admitted to practice must be of good moral character, be approved by the Reservation Court Bar, in writing, sign and take the oath, pay the Reservation Court Bar Fee, be at least twenty-one years of age, carry and display upon request verification of the admission to the Northern Cheyenne Court Bar, must not have been convicted of a felony or a misdemeanor within one year prior to the date of admission to the Reservation Court Bar.
- B. Any Lay Counselor to practice in the Courts of the Northern Cheyenne Reservation must show completion of a training session in Criminal Law and Procedure, Civil Law and Procedure and must have an understanding of the Appellate Court and Procedure and of legal writing and drafting of appropriate court forms.
- C. Any attorney who is an active member in good standing of the State Bar of Montana, or any attorney certified and eligible to practice before the highest Court of any other state or of the Supreme Court of the United States is eligible to be admitted to practice before the Courts of the Northern Cheyenne Tribe.
- D. Any person not a member of the Northern Cheyenne Tribe requesting admission to practice in the Courts of the Northern Cheyenne Reservation must agree to submit to the jurisdiction of the Court in any contempt proceeding arising out of an appearance before the Courts.

1-7-4. Procedure for Admission.

- A. Any Lay Counselor or Professional Attorney desiring to be admitted to practice before the Northern Cheyenne Courts shall apply for admission by certifying under oath and in writing to the following:
 1. That as Lay Counselor he has completed a training session

in Criminal Law, Civil Law and Procedures, operation of the Appellate Court and Procedure, and has knowledge of legal writing and drafting of appropriate court forms.

2. That as an Attorney he is an active member in good standing of the State Bar of Montana or of the bar of another state or is eligible to practice before the Supreme Court of the United States.
 3. That if admitted to practice before the Northern Cheyenne Courts he will take the required oath as prescribed in this Code for Attorneys and be bound thereby.
 4. That if admitted to practice, the Lay Counselor or Attorney will accept and represent indigent clients when asked by a Judge of the Court to do so.
- B. The Admission Fee of \$50.00 shall be tendered with the application, subject to return if the application is denied.
- C. Upon receipt of an application fee for admission to practice before the Northern Cheyenne Court, a Reservation Court Judge shall review the application and may, but need not, investigate into the truth of the matters contained therein. If satisfied that the applicant meets the qualifications set forth herein, the Court Clerk shall notify such person who may appear in person to take the oath prescribed herein or may subscribe to such oath and forward it to a Judge of the Court.
- D. Upon taking the oath, either in writing or orally, a Judge of the Court shall cause a certificate to be issued, evidencing the admission of the Lay Counselor or Attorney to practice before the Northern Cheyenne Courts.

1-7-5: Disbarment and Discipline.

- A. Whenever it is made to appear to a Judge of the Judicial System that any Lay Counselor or Professional Attorney admitted to practice before the Northern Cheyenne Courts has acted in an unethical or otherwise improper manner while functioning as a Lay Counselor or Attorney, a Judge may order such Lay Counselor or Attorney to appear within ten (10) days and show cause why he should not be suspended from practicing before the Northern Cheyenne Courts.
- B. Any Judge who finds a Lay Counselor or Attorney admitted to practice before the Northern Cheyenne Court to be in contempt of court may, in addition to any other sanction imposed, order the Lay Counselor or Attorney to appear within ten (10) days and show cause why he should not be suspended from practicing before the Northern Cheyenne Courts.

- C. All suspensions from practicing before the Courts of the Northern Cheyenne Reservation shall be for a period as ordered by the Judge.
- D. Any Lay Counselor or Attorney violating the Oath of Lay Counselors and Attorneys shall be subject to disbarment. Disbarment proceedings shall commence with the writing of a complaint against the Lay Counselor or Attorney, including the reasons for disbarment. A Judge of the Northern Cheyenne Court, within ten (10) days of the receipt of such a complaint, shall hold a hearing at which time the Lay Counselor or Attorney involved may present witnesses and a defense of his actions.

1-7-6. Contempt of Court - Appeal.

A Lay Counselor or Professional Attorney held to be in contempt of court can appeal immediately to the Appellate Court for action by the Appellate Judge.

1-7-7. Disbarment - Appeal.

A Lay Counselor or Professional Attorney disbarred from the Northern Cheyenne Courts can appeal to the Northern Cheyenne Appeals Court. There shall be no further appeal to the Tribal Council of the Northern Cheyenne Tribe.

1-7-8. Oath.

Upon the admission to practice as provided herein, a Lay Counselor or Professional Attorney shall take the following oath, either verbally before the Court, or subscribe his signature to such oath if admitted personally appearing:

"I, _____, do solemnly swear:

- (1) "I have read the Northern Cheyenne Code and am familiar with its contents."
- (2) "I will respect and obey the Charter, Constitution and by-laws of the Tribe in all respects."
- (3) "I will abide by the rules established by the Council and the Northern Cheyenne Reservation Court."
- (4) "I will at all times maintain the respect due the Northern Cheyenne Reservation Court and its officers."
- (5) "I will not counsel or speak for any suit or

proceeding which shall appear to me to be unjust, or any defense except such as I believe to be honestly debatable under the law of the Reservation, unless it be in defense of a person charged with a public offense."

- (6) "I will employ such means only as are consistent with truth and honor and will never seek to mislead a judge or jury by any false statements."
- (7) "I will abstain from all offensive conduct in the Northern Cheyenne Reservation Court."
- (8) "I hereby submit to the jurisdiction and recognize the jurisdiction of the Northern Cheyenne Court in regard to its ability to fine and/or jail my person if found in Contempt of Court."

1-7-9. Admission Fees of Lay Counselors and Attorneys.

Before a Lay Counselor or Professional Attorney shall be admitted to practice before the Northern Cheyenne Court, and as an annual condition to maintaining that privilege, he shall pay a fee of \$50.00, payable prior to taking the oath set forth herein and annually thereafter. Any Lay Counselor or Attorney failing to pay such annual fee within 30 days after the anniversary date of his admission shall forfeit the right to practice before the Northern Cheyenne Courts until formally readmitted.

1-7-10. Waiver of Admission Fees.

The admission fee shall be waived for persons who represent the Northern Cheyenne Tribal Court, the United States, or any State, or any political subdivision of all the above, and for persons who appear without charge to their clients.

1-7-11. Reservation Court Bar Roster.

The Clerks of Court of the Northern Cheyenne Court and Juvenile Court shall maintain a roster of all Lay Counselors and Attorneys admitted to the Northern Cheyenne Court Bar.

Chapter 8. DEFINITIONS

1-8-1. Number and Gender.

As used in this Code, the singular shall include the plural, and the plural shall include the singular, and the masculine shall include the feminine, and the feminine shall include the masculine, except where contrary intent is manifest.

1-8-2. Signature, Written Instrument.

As used in this Code, "signature" shall mean any written signature, or any mark or thumbprint witnessed by the written signature of at least one witness to the act. Wherever this Code shall refer to a "written instrument," that shall be construed to mean an instrument typed, printed, or written out in hand, and signed by the person who shall make it.

1-8-3. Oath.

As used in this Code "oath" shall mean "oath or affirmation," and "sworn" shall mean "sworn by oath or affirmation."

1-8-4. Court Day.

As used in this Code, "Court Day" shall mean any and every day of the week, except Saturday and Sunday and legal holidays, provided, that whenever a legal holiday shall fall on a Monday, the Saturday preceding that Monday shall also be a Court Day.

1-8-5. Counsel and Representative.

As used in this Code, "Counsel" shall mean any person appearing, speaking, or acting for another in any criminal or civil proceeding who shall be paid for his services, and "Representative" shall mean any person who shall appear, speak or act for another in any criminal or civil proceeding who shall not be paid for so doing.

1-8-6. Code.

As used in this Code, "Code" shall mean the Northern Cheyenne Reservation Code.

1-8-7. Contempt.

Civil Contempt is conduct directed at someone other than the Court that is detrimental to the dignity and authority of the Court.

Criminal Contempt is conduct directed at and detrimental to the dignity and authority of the Court.

1-8-8. Council.

As used in this Code, "Council" shall mean the Tribal Council of the Northern Cheyenne Reservation.

1-8-9. Enrolled Member.

As used in this Code, "Enrolled Member" shall mean any person validly and currently listed on the official membership roll of the Northern Cheyenne Tribe of Indians.

1-8-10. Member of Council.

As used in this Code, "Member of Council" shall mean any person eligible to vote at meetings of the Tribal Council.

1-8-11. District.

As used in this Code, "District" shall mean any of the political districts of the Northern Cheyenne Reservation.

1-8-12. Jail, Juvenile Detention Facility, Detoxification Facility, Overnight Facility.

As used in this Code, "Jail", "Juvenile Detention Facility", "Detoxification Facility", and "Overnight Facility" shall mean whatever building or facilities are from time to time appointed and designated for those purposes by the appropriate authorities of the Northern Cheyenne Reservation, and those purposes as set forth in this Code.

1-8-13. Person.

As used in this Code, a "Person" may be a citizen of this or any reservation or any state or territory and includes, but is not limited to, natural persons, corporations, partnerships, trusts, unincorporated business associations and any other organization or entity involved in private or commercial activity.