

TITLE IA

SEPARATION OF POWERS CODE

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CHAPTER 1. DEFINITIONS

- 1.A-1-1** Definitions. When used in this Title, 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 1A-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 1A-17-2.
 - F. "Chapter" means a chapter of this Title.
 - G. "Chief Appellate Judge" means the chief judge of the Appellate Court, selected as provided in section 1A-5-3.
 - H. "Chief Trial Judge" means the chief judge of the Trial Court, selected as provided in section 1A-4-3.
 - I. "Code of Judicial Conduct" means the code of conduct for Judges reaffirmed or adopted under section 1A-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 Title is in whole or in part invalid because it violates: (1) the Tribal Constitution and Bylaws; (2) a referendum adopted under Article VIII of the Tribal Constitution; (3) a Tribal resolution, ordinance or code; or (4) 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 1A-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 Title has been enacted by the Tribal Council, signed by the Tribal President, and reviewed by the Secretary of the Interior or his authorized representative. (*Note: This Title was enacted as an ordinance, Ordinance DOI 1(98), signed by the President on or about October 6, 1997, and reviewed by BLA on October 27, 1997. The Effective Date of this Title is therefore October 27, 1997.*)
- Q. "*en banc*" means three Appellate Judges sitting as a panel as provided in section 1A-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 X (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 1A-17-3.
- FF. "section" means a section of this Title.
- 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**

1A-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.

1A-2-2 Purpose. The purpose of this Title is to reorganize the Judicial Branch to facilitate implementation of the Tribal Constitutional requirement of separation of powers.

1A-2-3 Relationship to Remainder of Law and Order Code. In any case of inconsistency between a provision of this Title (as it may be amended as provided in section 1A-19-1) and any provision of any other Title of this Law and Order Code or of any other Tribal resolution, ordinance or code (except the Amended Revised Election Ordinance as provided in section 1A-10-5 below), the provision of this Ordinance shall be controlling.

1A-2-4 Implementation Period. To enable orderly implementation of the reorganization of the Judicial Branch under in this Title, 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 Title.

CHAPTER 3. COMPOSITION OF JUDICIAL BRANCH

1A-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

1A-4-1 Court of General Jurisdiction. The Trial Court shall be a trial-level court of general civil jurisdiction and 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.

1A-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 1A-10-4 or 1A-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.

1A-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.

1A-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 1A-16-3, manage the Trial Court calendar, and supervise the Court Clerk.

CHAPTER 5. APPELLATE COURT

1A-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.

1A-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.

1A-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.

1A-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 1A-16-3, and manage the calendars of the Appellate Court and the Constitutional Court.

1A-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.

1A-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

1A-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

1A-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.

1A-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 Title ("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 subsections A - D above.

1A-6-4 Relief. Unless authorized to grant Other Relief as provided in section 1A-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.

1A-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 1A-6-9.

1A-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 1A-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 1A-6-9), to cover matters not addressed by the foregoing provisions of this section 1A-6-6.

1A-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.

1A-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.

1A-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.

1A-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 Title. The sovereign immunity of the Tribe, any Tribal Entity, or any Tribal Representative is not

otherwise waived in any respect.

1A-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.

1A-6-12

Removals. The Constitutional Court shall confirm the Automatic Removal of a Judge as provided in section 1A-17-2, and shall hear and decide any Complaint for Removal of a Judge as provided in section 1A-17-3.

1A-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 1A-6-9; and
- B. may not be modified, vacated or reversed by the Tribal Council or the Executive Branch.

1A-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

CHAPTER 7. OFFICE OF THE COURT CLERK

- 1A-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.
- 1A-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.
- 1A-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.
- 1A-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

- 1A-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 1A-10-4 or 1A-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.
- 1A-8-2** **Age.** All Judges must be at least 30 years old.
- 1A-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.
- 1A-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.

- 1A-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.
- 1A-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.
- 1A-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 1A-17-3.
- 1A-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 Lame 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.
- 1A-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.
- 1A-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.
- 1A-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.
- 1A-8-12** **Deal with Conflict.** All Judges must be able to deal effectively with people in highly emotional, adversarial and confrontational situations.
- 1A-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

- 1A-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.

1A-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

1A-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 1A-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.

1A-10-2 First Election. As promptly as reasonably possible after the Effective Date of this Title, 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. (*Note: These primary and general elections were held on November 24, 1997, and December 29, 1997, respectively.*)

1A-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.

1A-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.

- 1A-10-5** **Amended Revised Election Ordinance.** Contemporaneous with or promptly after the adoption of this Title, the Tribal Council shall prepare and adopt amendments of the Revised Election Ordinance to implement the foregoing provisions of this Chapter 10. (*Note: The Revised Election Ordinance was so amended by Ordinance DOI 2(98), adopted October 22, 1997.*) 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

- 1A-11-1** **Appointment.** All Appellate Judges shall be appointed by the Tribal President with the concurrence of the Tribal Council.
- 1A-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 1A-9-1.
- 1A-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

- 1A-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 Title for any Court; and convert any Judgeship specified as a part-time position in this Title 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.
- 1A-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.
- 1A-12-3** **Added Appellate Judges.** All Added Appellate Judges shall be appointed by the

Tribal President with the concurrence of the Tribal Council.

1A-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 1A-9-1 during which the Added Judge was elected or appointed, plus the additional period described in section 1A-9-2.

CHAPTER 13. OVERSIGHT OF JUDICIAL BRANCH

1A-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 1A-17-2 or Removal by Complaint under section 1A-17-3.

CHAPTER 14. TRIAL AND APPELLATE COURT JURISDICTION

1A-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");

1A-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.

1A-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 1A-14-1 and 1A-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.

1A-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

- 1A-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.
- 1A-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 Title ("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.
- 1A-15-3** **Judge's Compensation.** Except for cases where the Tribal Council, acting under section 1A-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

- 1A-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.
- 1A-16-2** **Qualifications.** To serve as a Judge Pro Tem in a particular Court, one must possess the qualifications set forth in sections 1A-8-2, 1A-8-4 to 1A-8-7, and 1A-8-9 to 1A-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.

1A-16-3 **Assignment.** For the temporary purpose described in section 1A-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 1A-17-1.

1A-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 1A-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 1A-17-1.

CHAPTER 17. REMOVAL OF JUDGES

1A-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.

1A-17-2 **Automatic Removal.** A Judge shall forfeit and be removed from office ("Automatic Removal") as provided in this section 1A-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 Title, 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:

1. 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.
2. 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 Title. The hearing shall be held as promptly as possible but no sooner than 10 days from the date of issuance of the written notice.
3. 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.

4. 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.
 5. 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.
 6. 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 1A-17-4.A and B, if the conviction is vacated it will not disqualify Respondent from later serving as a Judge.

1A-17-3

Removal by Complaint. In addition to Automatic Removal under section 1A-17-2, any Judge may be removed from office by complaint ("Removal by Complaint") as provided in this section 1A-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:

1. has grossly or repeatedly failed to competently perform the duties of office;
 2. 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 1A-17-2.A or B, the convicted Judge shall be Automatically Removed in the manner described in section 1A-17-2;
 3. 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
 4. 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: (1) if it meets the formal and procedural requirements of this Ordinance; and (2) 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 (1) and (2) 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 (1) or (2), the Complaint shall thereupon be deemed dismissed and no further action shall be taken on it. If the Court reports positively on items (1) and (2), 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 subsection 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:
1. 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 Title.
 2. 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.
 3. 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.

1A-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 1A-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 Title.

- 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 1A-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 Title.
- C. **Removal by Complaint.** A person who has been removed as a Judge by Complaint as provided in section 1A-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

- 1A-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.
- 1A-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.
- 1A-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.

- 1A-19-1 **Two-Thirds Council Vote.** This Title 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.

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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 Code, which I have reviewed before making this request.

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