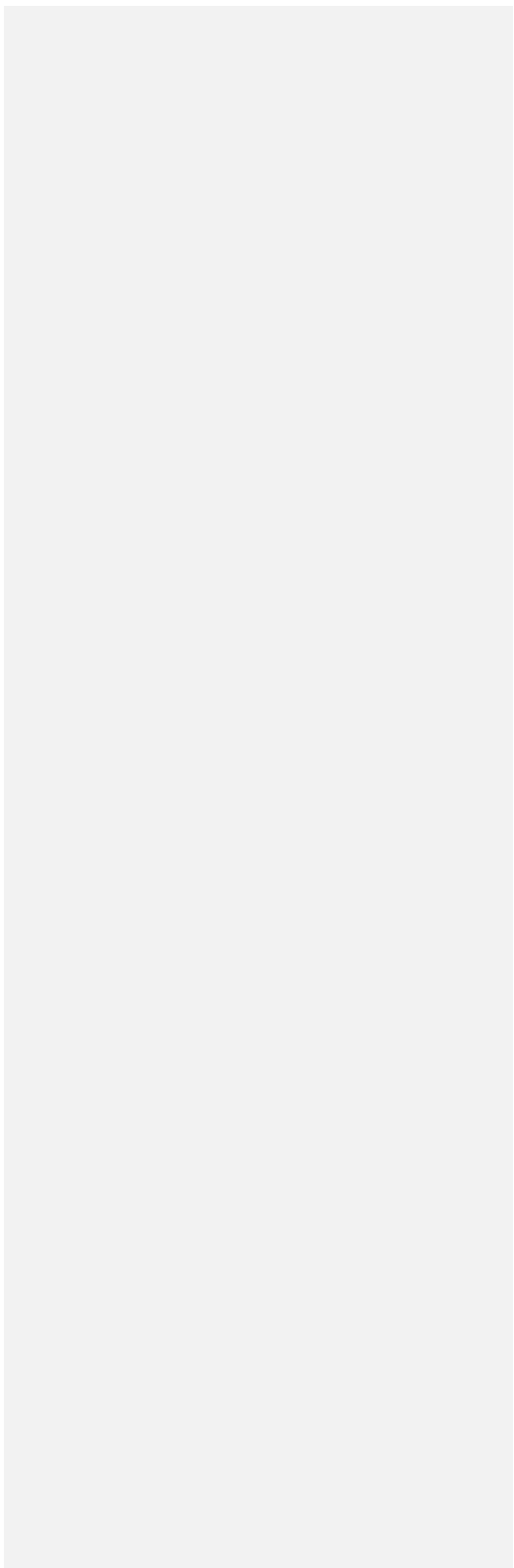


NORTHERN CHEYENNE TRIBE LOGO HERE

TITLE IV- CIVIL PROCEDURE

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CHAPTER 1. GENERAL PROVISIONS

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4.1.1 Scope of Rules

A. Scope

Except when different rules prescribed in the Law and Order Code specifically apply, these rules shall govern the procedures of the Northern Cheyenne Trial Court (hereinafter the "Court") in all actions, suits, and proceedings of a civil nature.

B. Construction

These rules shall be liberally construed to secure a just, speedy, and inexpensive determination of every action.

C. Applicable Laws and Discretionary Guidance

In Determining any case over which it has jurisdiction, the Court shall give binding effect to:

1. Any applicable provision of the Constitution of the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation or any law of the Tribe not in conflict with federal law.
2. Any applicable constitutional provision, treaty, law, or any valid regulation of the United States
3. Any applicable custom or usage of the Northern Cheyenne Tribe not in conflict with the law of

the Tribe or of the United States. Where any doubt arises as to such custom and usages, the Court may request the testimony, as witnesses of the Court, of persons familiar with such customs and usages.

4. In any case wherein provisions which would govern specific procedural issues are not contained in this chapter, any other Title of the Northern Cheyenne Law and Order Code, or any other applicable law of the Northern Cheyenne Tribe, the Court may look to the Law of the State of Montana for guidance.

Nothing in this section shall be construed as authorizing the applicability of any state or federal procedural or substantive law or statute to civil proceedings in the Northern Cheyenne Courts. [~~As amended by Ord. XXX~~]

D. One Form of Action

There shall be one form of action known, except in criminal cases, as a "civil action."

E. Limitations on Civil Actions

Unless otherwise specifically provided in this Code, the following limitations on the bringing of civil actions will apply:

1. Any aAction 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 of the cause of action accrued.

2. Any other action must be commenced within three years of the date of the cause of action accrued.

a. However, any cause of action based on fraud or mistake shall not be deemed to have accrued until the aggrieved party has discovered or reasonably should have discovered the facts constituting the fraud or mistake.

4.1.2 Civil Contempt

A. Acts or Failures to Act Which Constitute Contempt of Court

Any person may be charged with Contempt of Court for any of the following reasons:

1. Disorderly, contemptuous, or insolent behavior in presence and view of the Court that interrupts proceedings or impairs respect of the Court's authority;

2. Breach of peace, noise, or other disturbance interrupting proceedings;

3. Willful disobedience or resistance to any process of the Court or order issued by the Court;

4. Misbehavior or other willful neglect or violation of duty of an attorney or lay counselor,

5. Failure of an attorney or lay counselor to perform or refrain from performing some act or service as directed by the Court;

6. Acting as an officer, spokesman or other official of the Court without authority;

7. Publication of false or grossly inaccurate report of Court proceedings;

8. Requesting a jury trial and failing to appear on the date the jury trial is scheduled; or

9. Any other interference with the process, proceeding, or dignity of the Court or Judge of the Court while performing official duties.

B. Procedures in Contempt

1. When contempt of Court is committed in the presence of or so near the Court, it may be summarily adjudged and punished.

2. Any other contempt shall be determined at a hearing by the Court in which the person accused of contempt is given notice and an opportunity to be heard.

3. There will be no jury trials in contempt hearings.

C. Penalty

A Trial Judge (hereinafter "Judge") may issue any order necessary to allow the person to purge himself of contempt and may impose a sentence of up to five (5) days imprisonment and/or a fine of up to \$500.00 plus costs, as determined by the Court.

CHAPTER 2. COMMENCEMENT OF ACTION AND PRELIMINARY MATTERS

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**4.2.1- Commencement of Action -
Service of Process**

A. Commencement of Action

A civil action is commenced by filing a complaint ~~and~~ and the filing fee, as listed on the Court's current fee schedule, with the Court and serving a copy of the complaint on the defendant(s) as provided herein. The Court shall have jurisdiction from such time as both the complaint is filed and properly served upon the defendant and a return of service is filed with the Clerk. A case shall be dismissed without prejudice if the plaintiff does not complete service or move for service by publication within 30 days of filing a the complaint with the Court.

B. Service of Process

Service of process shall consist of the plaintiff delivering to the defendant a copy of the complaint along with a summons, which advises the defendant that he is required to answer the complaint within 20 days or a default judgment will be entered against him.

1. The summons shall be signed by a Judge or the Clerk, be under the seal of the Court, contain the names of the parties, be directed to the defendant, and state the name and address of the plaintiff or his attorney or representative in the action.

2. Service may be made in one of the following ways

a. To the defendant(s) personally; or

b. Upon a person of suitable age and discretion over 14 years old at the defendant's home or principal place of business; or

c. Upon an officer, managing agent, or partner of the defendant(s).

3. At the plaintiff's request the Court may order, in its discretion, that service be made by Tribal law enforcement officer or by a person specially appointed by the court.

4. If the defendant(s) cannot be found within the exterior boundaries of the Northern Cheyenne Reservation, service may be had by certified mail with delivery restricted to the defendant's usual residence or principal place of business. If the defendant has retained an attorney or lay counselor, deliver may be made to said attorney or counselor.

5. Service by publication may be made upon order of the Court for good cause shown by;

a. Publishing the contents of the summons in a local newspaper of general circulation, including, if available, the Northern Cheyenne Tribe's newsletter and newspaper, at least once a week for four (4) consecutive weeks; or

b. Posting the contents of the summons on the "Public Information and Announcements" page of the Northern Cheyenne Tribe's website; or

c. By posting the contents of the summons in the Littlewolf Capital Building with other community announcements.

In addition to any of the above methods, the plaintiff must provide the Court with a copy of the complaint or paper.

6. Service may be made by any law enforcement officer or other person, not a party to the proceedings, 18 years of age or older.

7. Service upon a person otherwise subject to the jurisdiction of the Northern Cheyenne Judicial System may be made anywhere in the United States. A party should first attempt to serve a party within the exterior boundaries of the Northern Cheyenne Reservation.

8. Proof of service must be made to the Court. The plaintiff must file with the Clerk of Court a receipt of service, endorsed with the name of the person serving and the date, time, and place of service.

9. If a defendant refuses to accept service, service shall be deemed performed if the defendant is informed of the purpose of the service and offered copies of the papers served in accordance with Rule ~~4-2-13~~(B)(2)-(6).

10. All ~~documents~~papers, except for the complaint, required to be filed shall be served as under this rule or may be served on the counselor or attorney of a party. Service of all ~~documents~~papers, except the complaint, may be made by mail, first class postage, prepaid and properly addressed.

11. Enforcement of service of process judgments, ~~and~~warrants, and any other exercise of civil authority of County or State, shall first be brought before the Northern Cheyenne Court for review. If justice so warrants, the Court shall order the Northern Cheyenne Police to implement such proceedings.

12. Service upon a state shall be upon the Secretary of State.

13. Service upon any branch or agency of the federal government shall be upon the Secretary of State or the head of the requisite agency.

4.2.2 Time

A. Computation:

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In computing any period of time set forth herein, the day on which the period is to commence shall not be counted and the last day of the period shall be counted; provided, however, that any time period under seven (7) days will not include intermediate Saturdays, Sundays, or legal holidays in the period and any period which would otherwise end on a Saturday, Sunday, or legal holiday will be deemed to end on the next day which is not a Saturday, Sunday, or legal holiday.

B. Enlargement-

The Court for good cause shown may enlarge the prescribed period of time within which any required act may be done.

C. Notice of Motions-

Written motions and notice of hearing thereon other than ones which may be heard ex parte, shall be served not later than five (5) business days prior to the time specified for hearing.

D. Service by Mail-

Whenever service is accomplished by mail, three (3) days shall be added to the prescribed period of time, but addition shall not cause Sundays or legal holidays to be counted in the time period if they would not otherwise have been counted.

4.2.3 Pleadings, Motions, Orders-

A. Form of Documents
~~Papers~~
~~All insofar as is possible, all documents~~ papers filed in any action shall be

1. Typed double spaced, except for matters customarily single spaced and contain at least a 2 inch

top margin and 1 inch left side margin. Writing shall appear on one side of the page only and each page shall be numbered at the bottom ~~[middle, right, left?]; and~~

a. When a plaintiff is represented pro se, the complaint may be handwritten using a form provided by the Court. The writing must be in blue ink.

2. Contain the name and office address, or if none, the residence address, and telephone number of the attorney or lay counsel for the party in whose behalf the paper is presented or if the party is appearing pro se. Should a party be without an address or telephone, the document shall set forth an address or telephone where the party may be contacted; and

3. Contain the Court file number on the first page. Counsel shall, upon the initial filing of any pleading, request and receive this number from the Court.

4. Whenever a document requires a signature, the signature shall be written in blue ink.

5. The Clerk of Court may reject any documents that do not comply with this subsection.

B. Pleadings-

There shall be a complaint and an answer. Responsive pleadings may be allowed whenever there is a cross-claim or counter-claim. The court may grant additional leave

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to plead in the interest of narrowing and defining issues or as justice may require.

C. Motions and Orders:

1. Motions- An application to the Court for an order shall be made by motion. Motions shall be made only to ask the Court to adjudicate on matters of law.

a. The Motion must be typed unless made orally during a hearing or trial and state with particularity:

2. The grounds for seeking the order; and

3. Relief or order sought.

a. A motion and notice of motion shall be set forth together.

b. For written motions, ~~upon serving and filing a motion, or within five (5) days thereafter,~~ the moving party shall serve and file one document containing the substance of the motion and a brief discussing the requirements of section (c)(1)(a)(1)-(2) (4) of this rule. The movant may request, prior to filing the motion, that the Court grant an extension of time to file a brief. The adverse party shall have ten (10) days after receipt of the motion and brief within which to serve and file an answer brief.

A pre-trial motion must be filed with the Court at least five (5) days before the trial or hearing date.

Failure to file briefs within the prescribed time may subject any motion to summary ruling. Failure to file a brief by the moving party shall be deemed an admission that the motion is without merit. And failure to file a brief by the adverse party shall be deemed an admission that the motion is well taken.

4. Orders-

An order includes every direction of the Court whether included in a judgment or not.

5. Hearings on Motions and Orders-

a. Hearings on motions shall be set at such time and place as has been approved by the Court. The Court may order or conduct a hearing on a motion if the Court believes a hearing would be beneficial, or upon a timely written request of either party.

b. A motion or hearing on an order shall automatically continue if the Judge before whom it was to be heard is unable to hear it on the day specified and no other Judge is available to hear it.

4.2.4- General Rules of Pleadings-

A. Claims for Relief-

A pleading which sets forth a claim for relief shall contain:

1. A short, plain statement of the grounds upon which the Court's jurisdiction depends, unless the Court already has jurisdiction over the matter;
2. A short plain statement of **each** claim showing that the pleader is entitled to relief; and
3. A demand for judgement for the relief to which the pleader considers himself entitled. Such claim for relief can be in the alternative or for several types of relief.

B. Defense-

A party shall answer a complaint in simple terms. **He shall state his defense to each claim and shall admit or deny each claim.** If the party does not know the **truth** of a claim, he shall state so and that statement shall have the effect of denial.

C. General Contents of Claims and Defenses-

Claims and defenses shall be simple, concise, and direct.

D. Affirmative Defenses-

Matters constituting an affirmative defense or avoidance shall be affirmatively set forth. When a party has mistakenly designated a defense as a counterclaim or vice versa, the Court may treat the pleading as if it had been properly designated if justice so requires. Examples of affirmative defenses include but are not limited to: assumption of the risk,

contributory negligence, discharge in bankruptcy, fraud, illegality, payment of debt and completion of contract.

E. Construction of Pleadings-

All pleadings shall be construed so as to do substantial justice.

4.2.5- Form of Pleadings-

A. Caption-

Every pleading shall contain a caption heading: the name of the court, the title of the action, the Court file number ~~-(if known)~~ and a designation as to what kind of pleading it is. All pleadings shall contain names of the parties except the name of the first party on each side may be used on all pleadings except the complaint.

B. Paragraphs

All claims or defenses shall be set forth in separate numbered paragraphs each of which is limited, as nearly as possible, to a single circumstance. Claims or defenses founded upon separate transactions or occurrences should be set forth in separate counts or defenses.

4.2.6- Defenses and Objections-

A. When Presented-

A defendant or a party against whom a claim has been made for affirmative relief shall have 20 days from the date of service upon which to answer or respond to the claim.

B. Motions-

Any motions to dismiss or to make the opposing parties' pleadings more definite shall be made within five days of receiving the opposing parties' pleadings and prior to answering a claim. An answer will not be due until **ten (10)** days after the claimant has complied with the Court's disposition of the motion, or if the Court denies the motion, upon the expiration of the original twenty days from the date of service.

4.2.7 Counterclaim or Cross-claim.

A. Counterclaim.

A party against whom a claim is made may assert in his answer any claims he has against the party claiming against him and both claims will be resolved at trial.

B. Cross-claim.

A party against whom a claim is made may assert any claim he has against a co-party and have such claims resolved at trial.

C. Third Party Claim.

A party against whom a claim is made may complain against a third party who is or may be liable for payment or performance of the claim of the opposing party and have such complaint resolved at trial.

4.2.8 Amendment of Pleadings.

A. Amendment Before Trial

A party may amend his pleadings once before the opposing party has replied or if no reply is required, not less than 20 days before the case is scheduled for trial. The opposing party may respond, if appropriate, and the trial date be delayed if necessary.

Other amendments shall be allowed only upon motion and order of the Court.

B. At Trial.

When issues or evidence not raised in the pleadings are heard at the trial, the judgment may conform to such issues or evidence without the necessity of amending the pleadings.

~~Rule 114.2.9: Parties.~~

A. Real Party in Interest.

Every action shall be pursued in the name of the real party in interest, except a personal representative or other person in a fiduciary position can sue in his own name without joining the party for whose benefit the action is maintained.

B. Guardian Ad Litem.

When an infant, insane, or incompetent person who has not had a general guardian appointed is a party, the Court shall appoint a guardian ad litem to represent such person in the suit or action.

C. Joinder of Claims.

A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join as many claims as he has against an opposing party or co-party.

D. Joinder of Parties.

To the greatest extent possible all persons or parties interested in a particular action may be joined in the action. **A person must be joined as a party if it would be impossible to**

reach a just result without such party. If it is infeasible to join a person who is a required party, the court must determine whether, in the interest of justice, the action should proceed among the existing parties.

4.2.10: Intervention

A person may be permitted in the discretion of the Court to intervene and be treated in all respects as a party to an action in cases in which property in which he claims an interest may be substantially affected by disposition of the action or where a question of law or fact common to a claim of his may be litigated.

Rule 134.2.11: Substitution of Parties

If a party dies or becomes incompetent or transfers his interest or separates from some official capacity, a substitute party may be joined or substituted as justice requires.

Rule 144.2.12: Discovery

A. A party may submit written interrogatories to any other party who shall answer them in writing, under oath, within 25 days of receipt of such.

B. Deposition-

A party may take the oral deposition of an adverse party or non-party witness under oath. The petitioner must serve each expected witness at least 20+ days before the hearing or trial date and provide them not less than ten (10) days notice of the deposition, specifying the time and place where such will occur.

C. Production, Entry, or Inspection-

A party may request another party to produce any documents or things in his

custody or possession for inspection or copying or request permission to enter and inspect property reasonably related to the case. These requests must be made at least 40 days before a trial or hearing date. The opposing party shall within 25 days reply as to whether or not such will be allowed and, if not, why not.

D. Scope of Discovery

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the pending action, whether or not such would be admissible at trial, if such appears reasonably calculated to lead to the discovery of admissible evidence; except that discovery may not be had of the work product of a party's counselor or attorney.

E. Protective Order

A party against whom discovery is sought may move the Court for a protective order to prevent undue annoyance, harassment, embarrassment, oppression, or undue burden or expense, and the Court may order that the discovery cease or proceed only upon specified conditions. Motions for a protective order should be made in a timely manner after receipt of the request for the material(s) at issue.

F. Failure to Make Discovery

If a party fails to respond or appear for discovery as provided in this rule, the opposing party may move for an order to compel the defaulting party to perform and the Court may award costs to the non-defaulting party. If a party fails to perform after being ordered to do so by the Court, the Court may, upon motion, order that a certain fact, claim, or defense be deemed established or strike part of a claim or

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defense or dismiss or render a judgment by default against the non-complying party.

G. Use of Discovery

Answers to interrogatories and depositions may be used in a motion, hearing, or at trial to impeach or contradict the testimony of the person discovered, or by an adverse party for any purpose.

H. If a witness is unavailable to testify because of incompetence, absence from the jurisdiction by a distance greater than 100 miles, illness, death, or imprisonment, a sworn deposition may be offered in lieu of testimony of the witness who gave the deposition. This exception does not apply if it appears that the absence was procured by the person offering the deposition.

~~Rule 154.2.13~~ Pre-Trial Conference

A. Purpose

A pre-trial conference shall be held as soon as practicable, but at least 14 days prior to trial in order to determine the points of law and facts agreed upon by the parties and to determine the remaining issues to be resolved at trial. The presiding Judge shall set the time and date for the conference.

B. Who Attends

The Plaintiff(s), Defendant(s) and their counsel, if they have one, are required to attend the pre-trial conference. Failure to appear at a scheduled pre-trial conference may result in a charge of contempt of Court. Other persons may attend with the advance consent of the Judge conducting the pre-trial conference and only if their presence will further the purpose stated above.

C. Conduct of Conference

The parties shall be prepared orally, or in writing on request of the presiding judge to:

1. Discuss the contentions of the parties and outline the legal theories upon which the action or defense is based;
2. Discuss any problems which are believed to be of importance and should be decided by the Court in advance;
3. Suggest any contemplated amendments to the pleadings;
4. Discuss any problems of discovery including:
 - a. The general nature of any requests for admission or answers to interrogatories they intend to file;
 - b. The documents they wish to inspect and the names of the witnesses they intend to depose and the method and place of taking depositions;
 - c. Any documents that will be produced without the requirements of a motion to produce;
 - d. Suggest a timeline for accomplishing the various steps of the discovery process; and
 - e. Suggest a date when Discovery will be completed; and

5. Discuss deadlines, to be set by the judge, for any of the above mentioned items.

No record or transcript of the conference shall be made except for the Order and Memorandum of Pre-Trial Conference. No statements made at the Conference by any person shall be used at trial except for voluntary agreements reached between the parties on points of law and facts as recorded in the Order and Memorandum of Pre-Trial Conference. ~~The judge may also set a trial date and set deadlines for motions to be filed and argued, for depositions and discovery to be completed and for delivering a list of witnesses to be subpoenaed.~~

D. Disposition by Order and Memorandum of Pre-Trial Conference

The Order and Memorandum of Pre-Trial Conference shall include:

1. Trial date.
2. Whether or not a jury will be called.
3. List of witnesses to be subpoenaed.
4. Agreements and orders regarding depositions, discovery, and motions.
5. Agreements regarding points of law and facts.
6. Remaining issues to be resolved at trial.

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

~~III~~ **CHAPTER 3. TRIAL**

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~~Rule 164.3.1~~ **Jury Trials**

A. When Allowed

A party may request a trial by jury in all civil actions involving a claim or claims exceeding \$~~1,000. 500.00~~. ~~Trial by jury is not permitted in domestic relations cases, cases involving adoptions, probate, minors, incompetence, hearings on court orders, contempt, or cases in the Appellate Court or Constitutional Court.~~ The request for jury trial shall be filed, along with a fee, as listed on the Court's current fee schedule, ~~of \$10.00, no~~ less than 25 days prior to the scheduled date of trial.

B. Issues Triable

Unless the requesting party specifies otherwise, all factual issues properly triable by a jury shall be decided by the jury at trial. A party requesting a jury trial may specify only those issues he wants tried to the jury. ~~Any other party may specify, no later than the pre-trial conference, any other issues he wishes to be so tried as well.~~ Once any or all issues of a case have been requested for a

jury trial, such request may not be withdrawn without the consent of all of the parties.

C. Designation by Judge

1. A Judge may, upon his own motion, order a trial by a jury of any or all of the factual issues of a case regardless of whether or not the parties have requested such.

2. A Judge may, upon motion of any party or upon his own motion, find that some or all of the issues designated for jury trial are not properly triable to a jury, and order that no jury trial be held on such issues.

3. A Judge may hear and decide an issue without a jury if either party to the issue fails to appear at trial, regardless of any request made for a jury trial on such issue.

~~Rule 174.3.2~~: Assigning Cases for Trial

A. Assignment of Judge and Date

The Chief Trial Judge shall designate the Judge who will hear a case. The designated Judge shall assign a trial date for the earliest reasonable time.

B. Postponement

Upon motion of a party and a showing of good cause, the Court may, in its discretion, postpone a trial or proceeding upon such terms as it deems just, including the payment of any costs occasioned by such postponement.

~~Rule 184.3.3~~: Dismissal of Actions

A. Voluntary Dismissal

Prior to the filing of responsive pleadings as described in Rule 4-2-68, a motion to dismiss, or a motion for summary judgment on such claim, the party making the claim may file a notice of dismissal and his claim shall be deemed dismissed without prejudice. In all other circumstances a party may move the Court to dismiss his own claim and the Court shall do so either with or without prejudice as is just and proper given the stage of the proceedings and in the discretion of the Court. However, if a cross-claim or counterclaim has been filed against the moving party, the Judge shall dismiss the claim only with the consent of the adverse party or only if it appears that the other party can pursue his claim independently without undue additional hardship.

B. Involuntary Dismissal

A party against whom a claim has been made may move the Court to dismiss the claim of the adverse party upon any of the following grounds:

1. Failure of the adverse party to pursue prosecution of his claim;
2. Failure of the adverse party to comply substantially with these rules;
3. Failure of the adverse party to comply with an order of the Court that affects the party's case;
4. At the close of the presentation of the other party's evidence and without prejudicing his own right to present evidence, failure of the opposing party to establish a right to relief based on the facts and law presented; or

5. Whenever dismissal appears proper based upon a failure to prove a claim, such dismissal shall be deemed an adjudication of the merits of the issue dismissed-unless the Court shall, for good cause shown, order otherwise. The Court may postpone ruling on a motion to dismiss for failure to establish a right to any relief until the close of all the evidence.

C. The Court may order a party moving to dismiss his own claim to pay the cost of the adverse party if the proceeding has progressed beyond the pleading stage and may order payment of cost in other circumstances where such is deemed appropriate.

~~Rule 194.3.4:~~ Consolidation: Separate Trials.

A. Consolidation

The Court may, upon motion of any party or its own motion, order some or all of the issues of separate actions tried together when there is a common issue of fact or law relating the actions or if such will tend to avoid unnecessary cost or delay.

B. Separate Trials.

The Court may, to avoid prejudice or in furtherance of convenience, order a separate trial of a claim or issue.

~~Rule 204.3.5:~~ Evidence

A. Form and Admissibility.

At all hearings and trials, the testimony of witnesses shall be taken orally under oath, unless otherwise provided in these rules. All

evidence admissible under the Northern Cheyenne Rules of Evidence shall be admissible.

B. Examination and Cross Examination.

1. A party may use leading questions against an adverse party or hostile witness or whenever such appears reasonably necessary to elicit testimony from witnesses of tender years or poor ability to communicate.

2. A party may call any person to be a witness and examine any witness so called on any matter relevant to the action. A party may impeach his own witness.

3. Cross examination shall be limited to the general scope of direct examination, provided, however, that full examination of all witnesses may be allowed on cross examination to assure complete development of all relevant facts.

C. Physical Evidence.

Written documents and other physical evidence shall be received upon being identified, authenticated, and a showing of relevance to the action.

D. Official Documents.

Official documents or an official law, record or copy thereof may be admitted into evidence upon the testimony of an official having custody or official knowledge thereof or without such testimony if the document or record or copy thereof is accompanied by an affidavit identifying such thing and stating that it is a true and

correct representation of what it purports to be.

E. Record of Excluded Evidence~~z~~

In an action tried to a jury, excluded evidence may, upon request, be included in the record for purposes of appeal and excluded oral testimony shall be put into evidence by means of an offer of proof made out of the hearing of the jury. In an action tried only to the Court, the Judge may receive such excluded testimony into the record.

~~Rule 214.3.6:~~ Subpoenas

A. Issuance~~z~~

1. Upon request of any party or upon the Court's own initiative, the Court shall issue subpoenas to compel the testimony of witnesses, or the production of books, records, documents, or any other physical evidence relevant to the determination of the case and not an undue burden on the person possessing the evidence. The Clerk of Court may act on behalf of the Court and issue subpoenas which have been signed by a judge and which are to be served within the confines of the jurisdiction of the Northern Cheyenne Indian Reservation.

2. A subpoena shall bear the signature of a Judge or Judge Clerk of the Court and it shall state the name of the Court, the name of the person or description of the physical evidence to be subpoenaed, the title of the

proceedings, and the time and place where the witness is to appear, or the evidence is to be produced.

B. Failure to Appear~~z~~

A person who has been properly served with a subpoena and fails to appear or produce may be deemed in contempt of Court and/or the Court may order his arrest for the offense of Failure to Obey a Lawful Order of the Court.

C. Subpoena Unnecessary~~z~~

A person present in Court, or before a judicial officer, may by, Required to testify in the same manner as if he were in attendance upon subpoena.

D. Challenges

Any motion to quash or other challenge to a subpoena shall be governed by Rule ~~4-2-35~~(Ce).

A. Number of Jurors: Alternate

There shall be six jurors chosen to hear a case plus the Court may allow one additional juror to be chosen as an alternate juror. In the event that an alternate juror is chosen, he shall be treated as a regular juror in all respects unless dismissed by direction of the Court prior to the jury's deliberations.

B. Examination of Jurors~~z~~

The Court shall permit the parties or their attorneys to conduct the examination of prospective jurors and may itself examine the jurors.

C. Challenges~~z~~

1. A challenge is an objection made to a potential trial juror. Either party may challenge jurors but where there are several parties on either side, they must join in a challenge before it can be made.

2. Challenges to jurors are either peremptory or for cause. Each party or side shall be entitled to three peremptory challenges.

3. Challenges for cause shall be made against a potential juror on the grounds that he is not entitled or qualified to be a juror, he is familiar with the case or has formed an opinion regarding the case, or if for any other reason it appears likely or reasonably possible that a juror will not be able to render a fair, impartial verdict. The Judge may take evidence relative to a challenge for cause and shall in any event render a decision thereon.

D. Eligibility for Jury Duty

Any resident of the Northern Cheyenne Reservation, **regardless of their tribal status**, between the ages of 18 and 70 who has not been convicted within one year of a felony or misdemeanor under this Code shall be eligible to be a juror. Judges, police officers, and other officers and employees of the Court shall not be eligible to be jurors while thus employed. Each year the Court Administrator or his designee shall randomly choose a list containing the names and addresses of at least 50 but not more than 75 eligible jurors.

E. Trial Juries

The Clerk shall subpoena not less than twelve persons from the list of eligible jurors to appear and be available as jurors whenever a jury trial is scheduled in a civil or criminal matter. The selection from the list of eligible jurors shall be by lot or some means of random, impartial selection.

F. Power to Excuse Jurors

The Judge assigned to hear a case shall have the power to excuse a person subpoenaed to appear as a juror on account of sickness, disability, extreme hardship, or other good cause shown upon the request to be excused by the persons subpoenaed.

G. Compensation of Jurors

Each juror who is called and reports for jury duty or who serves on a jury shall be entitled to receive such fees for daily services and/or mileage, if any, as established by the Rules of Court.

H. Discharge of Juror

If, after the proceedings begin and before a verdict is reached, a juror becomes unable or disqualified to perform his duty, the alternate juror shall take his place; if there is no alternate juror, the parties may agree to complete the action with the other jurors. If no agreement can be reached, the Judge shall order a temporary delay in trial for such time as is necessary to impanel a new jury.

I. View of Jury

The Court may, for good cause shown, allow the jury to view the property or place of occurrence of a disputed or otherwise relevant event.

J. Separation of the Jury

Any time prior to their verdict when the jurors are allowed to leave the courtroom, the Judge shall admonish them not to converse with or listen to any other person on the subject of the trial and further admonish them not to form or express an opinion on the case until the case is submitted to the jury for their decision. **Failure of a juror to abide by the Judge's instructions shall be grounds for dismissal and may constitute contempt of Court.**

K. Deliberation~~z~~

Once the case is submitted to it, the jury shall retire to deliberate in private under the charge of an officer of the Court who will refrain from communicating with them except to inquire whether they have reached a verdict, and he shall prevent others from improperly communicating with the jury.

L. Things Taken by Jury~~z~~

The jury may take with them when deliberating any of the following:

1. The Court's instructions;
2. Papers or things received in evidence as exhibits.
3. Notes taken by the jurors themselves, but not notes taken by a non-juror.

M. Additional Instructions~~z~~

If after the jury retires there is some question on an instruction or other point of law or disagreement regarding the testimony, the jury may request additional instructions from the Court, such to be given on the record after notice to the parties or their counsel.

N. No Verdict~~z~~

If the jury is discharged before rendering its verdict or for any reason prevented. from giving a verdict, the action shall be retried.

O. Declaration of the Verdict~~z~~

When all or at least five of the six jury members agree on a verdict, they shall so inform the officer who shall notify the Court. The jury shall be conducted into the courtroom and the clerk shall call the jury roll; the verdict shall be given in writing to the Clerk and then read by the Clerk to the Court; inquiry shall be made by the Court to the jury foreman as to whether such is their verdict. Either party may have the jury polled individually to determine if such is, in fact, their verdict. If insufficient jurors agree with the verdict, the jury shall be sent out again to reconsider; otherwise, the verdict is complete, and the jury shall be dismissed. If the verdict is read or recorded incorrectly by the clerk or foreman, the jury shall retire to correct the verdict.

~~Rule 234.3.8: Special Verdicts and Interrogatories.~~

The Court may require the jury to return its verdict in the form of specific findings on specified issues or may require the jury to return a general verdict accompanied by answers to questions related to the issues under consideration.

~~Rule 244.3.9: Instructions to the Jury: Arguments.~~

A. Instructions~~z~~

At the close of the evidence or at such earlier time as the Court may direct, any party may file written requested instructions

for the Court to give to the jury. The Court shall inform the parties or their counsel of the instructions it intends to give and hear objections and rule on them out of hearing of the jury.

B. Arguments:

Final arguments for the parties shall be made after the jury has been instructed. The Court shall not comment on the evidence of the case.

~~Rule 254.3.10:~~ Motions for Directed Verdict and for Judgment Notwithstanding the Verdict:

A party who has made a motion for a directed verdict which has been denied or not granted may within 10 days after entry of judgment move to have the verdict and any judgment entered thereon set aside and entered according to his motion for directed verdict; or if there has been no verdict, the party may so move within 10 days after the jury has been discharged. A motion for a new trial may be made in the alternative. The Court shall enter judgment or make any orders consistent with his decision on the motions.

~~Rule 264.3.11:~~ Findings by the Court:

In cases tried without a jury, except in cases where a party defaults, fails to appear or otherwise waives his right to a hearing, findings of fact and conclusions of law shall be made by the Court in support of all final judgments. Upon its own motion or the motion of any party within 10 days of the entry of judgment, the Court may amend or add findings and the judgment may be amended accordingly.

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~~4.4.1:~~ Judgment: Cost:

A. Definition

A judgment includes any final order from which an appeal is available and no special form of judgment is required.

B. Judgment on Multiple Claims:

When more than one claim for relief is presented in an action, however designated, a final judgment may be entered on less than all of such claims only upon the Court's specific finding that such is justified. Absent such a finding, an order or decision will not terminate the action as to any of the claims until all claims are finally decided, nor will the appeal period commence to run.

C. Demand for Judgment

1. Generally. Except in the case of a default judgment, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if such

relief is not demanded in the pleadings. It may be given for or against one or more of several claimants; and it may, if justice so requires, determine the ultimate rights of the parties on each side as between or among themselves.

2. Judgment by Default~~z~~

A judgment by default shall not be different in kind, or exceed in amount, that specifically prayed for in the claim for relief.

D. Cost

~~[As amended by Ord DOI 3(98)]~~ Unless the court shall otherwise direct, the Court shall allow necessary costs and disbursements to the prevailing party or parties as a matter of course. Such prevailing party shall file with the Court a verified memorandum of his costs and necessary disbursements within five days of the entry of judgment and serve a copy of such on the opposing party, and if such are not objected to within 10 days, they shall be deemed to be a part of and included in the judgment rendered. The Appellate Court may award costs in a like manner. **Costs shall include filing fees, reasonable and necessary expenses of involuntary witnesses, costs associated with compensation and expenses of the jury, and such other proper and reasonable expenses.**

E. Attorney's Fees

The Court shall not award attorney's fees in a case unless such have been specifically provided for by contract or agreement made by the parties to the dispute, or unless it reasonably appears that the case has been prosecuted for purposes of harassment only, or that there was no reasonable expectation

of success on the part of the affirmatively claiming party. In any action, except by the tribe, against the bond of any officer or employee, if judgment shall be against the plaintiff the Court shall award a reasonable attorney's fee against such plaintiff and in favor of the defendant or defendants.

~~4.4.2z~~ **Default**

A. Entry of Default

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, his default may be entered by the Clerk and judgment by default granted.

B. Judgment by Default~~z~~

Where any party, after being served with a copy of the complaint as provided in Rule 4.2.13, fails to appear at the hearing, at trial, or otherwise to prosecute or defend a case, judgment by default may be entered by the Clerk if a party's claim against the opposing party is for a sum of money which is or can by computation be made certain. Otherwise, judgment by default can be entered only by the Court upon receipt of whatever evidence the Court deems necessary to establish the claim. No judgment by default shall be entered against the Northern Cheyenne Tribe.

C. Setting Aside Default~~z~~

The Court may, for good cause shown, set aside either an entry of default or a default judgment, if the good cause is presented to the Court within thirty (30) days after the entry of default is granted.

~~4.4.3z~~ **Summary Judgment-**

Any time within twenty (20) days after commencement of an action, any party may move the Court for summary judgment as to any or all of the issues presented in the case and such shall be granted by the Court if it appears that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Such motions, which shall be served not less than 10 days prior to the hearing on said motion, may be supported by affidavits, discovery, or memoranda, all of which must be made available to opposing parties at least two days prior to the hearing.

~~Rule 304.4.4:~~ Entry of Judgment.

A. Judgment.

Judgment upon verdict of jury shall be signed by the Clerk and filed. All other judgments shall be signed by the Judge and filed with the Clerk.

B. Effectiveness: Recordation

A judgment is complete and shall be deemed entered for all purposes when it is signed and filed as provided herein. The Clerk shall immediately make a notation of the judgment in the register of actions and the judgment docket.

C. Death of a Party.

If a party dies after a verdict or decision has been reached upon any issue of fact before judgment, a judgment may nevertheless be entered thereon.

D. Satisfaction of Judgment.

A judgment may be satisfied, in whole or in part, as to any or all of the judgement debtors by the owner thereof or his attorney of

record executing under oath and filing an acknowledgment of satisfaction specifying the amount paid and whether such is a full or partial satisfaction. A Judge may order the entry of satisfaction upon proof of payment and failure of the judgment creditor to file a satisfaction. The Clerk shall file all satisfactions of judgment and note the amount thereof in the register of actions and the judgment docket.

E. Effect of Satisfaction Limitation.

A judgment satisfied in whole, with such act being entered in the judgment docket, shall cease to operate as such. A partial satisfied judgment or unsatisfied judgment shall continue in effect for eight years. An action to renew the judgment remaining unsatisfied may be maintained any time prior to the expiration of eight years and will extend the period of limitations for one additional eight year period.

~~4.4.5:~~ New Trials: Amendments of Judgment.

A. Grounds: Time

Any party may petition for a new trial on any or all of the issues presented **by filing with the Court and serving a motion** not later than 10 days after the entry of judgment, for any of the following grounds:

1. Error or irregularity which prevented any party from receiving a fair, trial;
2. Misconduct of the jury or jury members;
3. Accident or surprise, or newly discovered evidence which ordinary prudence could not have

guarded against or produced at the trial;

4. Damages so excessive or inadequate that they appear to have been given under influence of passion or prejudice;

5. Insufficiency of the evidence to justify the verdict or other decision, or that it is contrary to the law; or

6. Error in law.

B. Harmless Error~~;~~

A new trial shall not be granted on the basis of error or irregularity which was harmless in that it did not affect substantial justice.

C. Support for Motion~~;~~

Parties may include memoranda or affidavits in support of their motions to which reply memoranda and affidavits shall be allowed if desired.

D. Court Initiative

The Court may, on its own initiative, not later than 10 days after entry of judgment, order a new trial on any grounds assertable by a party to the action, and shall specify the reasons for so ordering.

E. Motion to Alter or Amend Judgment~~;~~

A motion to alter or amend a judgment shall be filed with the Court and served not later than 10 days after entry of the judgment.

~~4.4.6~~ Relief from Judgment or Order

A. Clerical Mistakes

Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the Court at any time by its own initiative or on the motion of any party and after such notice as the Court may direct; mistakes may be corrected before an appeal is docketed in the court of appeals, and thereafter while the appeal is pending with leave of the court of appeals.

B. Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc.

On motion and upon such terms as are just, the Court may; in the furtherance of justice, relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

1. mistake, inadvertence, surprise, or excusable neglect;

2. newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule ~~4-4-531~~(A);

3. fraud, misrepresentation, or other misconduct of an adverse party;

4. when, for any cause, the summons in an action has not been personally served upon the defendant and the defendant has failed to appear in said action;

5. the judgment is void;

6. the judgment has been satisfied, released, or discharged, or a determination in equity that the

judgment should have prospective application; or

7. any other reason justifying relief from the operation of the judgment. This rule does not limit the power of a Court to entertain an independent action to relieve a party from a judgment, order or proceeding or to set aside a judgment for fraud upon the Court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in rules 4.4.8~~34~~, or by independent action.

4.4.7: Harmless Error:

No error in either the admission or the exclusion of evidence, and no error or defect in any ruling or order or in anything done or omitted by the Court or by any of the parties, is grounds for granting a new trial or otherwise disturbing a judgment or order, unless refusal to take such action appears to the Court inconsistent with substantial justice. The Court at every stage of the proceeding shall disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

Rule 344.4.8: Stay of the Proceeding to Enforce a Judgment:

A. Stay Upon Entry of Judgment-

Proceedings to enforce a judgment may issue immediately upon the entry of the judgment, unless the Court at its discretion and on such conditions for the security of the adverse party as are proper, otherwise directs.

B. Stay on Motion for New Trial or for Judgment-

In its discretion and on such conditions for the security of the adverse party as are proper, the Court may stay any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment or a motion for relief from a judgment order, or a motion for judgment in accordance with a motion for a directed verdict, or a motion for amendment to the findings of fact or for additional findings.

C. Injunction Pending Appeal-

When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the Court in its discretion may suspend, modify, restore, or grant a temporary injunction during the pendency of the appeal upon such conditions as it considers proper for the security of the rights of parties.

D. Stay Upon Appeal-

When an appeal is taken the appellant may obtain a stay by giving bond in an amount set by the Court, unless such a stay is otherwise prohibited by law or these rules. The bond may be given within ten (10) days after the time of filing the notice of appeal. The stay is effective when the bond is approved and received by the Court.

E. Stay in Favor of the Tribe or Agency Thereof

When an appeal is taken by the Tribe, or an officer or agency of the Tribe, and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.

F. Power of the Appellate Court Not Limited ~~[As amended by Ord. DOI-3(98)]~~

The provisions in this rule do not limit any power of the Appellate Court to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of any appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

G. Stay of Judgment Upon Multiple Claims

When a Court has ordered a final judgment on some but not all of the claims presented in the action under the conditions stated in Rule ~~4.4.127~~(B), the Court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

H. Waiver of Undertaking

In all cases, the parties may, by written stipulation, waive the requirements of this rule with respect to the filing of a bond or undertaking. In all cases where an undertaking is required by these rules a deposit in Court in the amount of such undertaking, or such lesser amount as the Court may order, is equivalent to the filing of the undertaking.

~~Rule 354.4.9:~~ Injunctions

A. Preliminary Injunction Notice

No preliminary injunction shall be issued without notice to the adverse party.

B. Temporary Restraining Order; Notice; Rehearing; Duration ~~[As amended by Ord. No. DOI-003(2016)]~~

The Court may, without requiring prior notice to the respondent, issue an immediate temporary order of protection for up to ~~1520~~ days if the court finds, on the basis of the petitioner's sworn petition or other evidence, that immediate and irreparable harm or damage may result to the petitioner if an order is not issued before notice can be served and a hearing had thereon. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; and shall be filed forthwith in the Clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed ~~1520~~ days, as the Court fixes, unless within the time so fixed the order, for good cause shown, is extended for like period, or unless the party against whom the order is directed consents that it may be extended for a longer period. **The Court shall not** allow more than one extension of a temporary restraining order **absent extraordinary circumstances.**

The reasons for the extension shall be entered on record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence over all matters except older matter of the same character; and when the motion comes on for a hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if he does not do so, the Court shall dissolve the temporary restraining order. On two (2) days notice to the party, as the Court may prescribe, the adverse party may appear and move its

dissolution or modification and in that event the Court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

C. ~~Security~~

Except as otherwise provided by law, no restraining order or preliminary injunction shall issue except upon giving of security by the applicant, in such sum as the Court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the United States, the Northern Cheyenne Tribe, or of an officer, or agency, of either; nor shall it be required of a ~~domestic partner, married person, or other romantic~~ partnerships in a suit against the other party to the ~~relationship~~marriage.

A surety upon a bond or undertaking pursuant to this title submits himself to the jurisdiction of the Court and irrevocably appoints the Clerk of Court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion as the Court prescribes and may be served on the Clerk of Court who shall forthwith mail copies to the persons giving the security if their addresses are known.

D. ~~Form and Scope of Injunction or Restraining Order: Service~~

Every order granting an injunction and every restraining order shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and

upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

E. ~~Grounds for Injunction~~

An injunction may be granted:

1. When it appears by the pleadings on file that a party is entitled to the relief demanded, and such relief, or any part thereof, consists in enjoining the commission or continuance of some act complained of; either for a limited period or perpetually.

2. When it appears from the pleadings or by affidavit that the commission or continuance of some act during the litigation would produce great or irreparable injury to the party seeking injunctive relief;

3. When it appears during the litigation that either party is doing, or threatens, or is procuring or suffering to be done, some act in the violation of the rights of another party respecting the subject matter of the action, and tending to render the judgment ineffectual;

4. In all other cases where an injunction would be proper in equity.

~~4.4.10~~ ~~Extraordinary Writ~~

A. ~~Grounds for Relief~~

Where no other plain, speedy, and adequate remedy exists, relief may be obtained by obtaining an extraordinary writ which may be granted for any one of the following grounds:

1. Where any person usurps, intrudes into, or unlawfully holds or exercises a public office or does or permits to be done any act which by law works a forfeiture of his office;

2. Where an inferior tribunal, board or officer exercising judicial functions has exceeded its jurisdiction or abused its discretion;

3. Where the relief sought is to compel any inferior tribunal, board, or person to perform an act which the law specifically enjoins as a duty resulting from an office, trust, or station or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled and from which he is unlawfully excluded by such inferior tribunal; board or person; or

4. Where the relief sought is to arrest the proceedings of any tribunal, board, or person, whether exercising functions judicial or ministerial, when such proceedings are without or in excess of the jurisdiction of such tribunal, board or person.

B. Habeas Corpus:

Appropriate relief by habeas corpus proceedings shall be granted whenever it appears to the Court that any person is unjustly imprisoned or otherwise restrained of his liberty. Upon the filing of the complaint the Court shall, unless it appears from such complaint or the showing of the plaintiff that he is not entitled to any relief, issue a writ directed to the defendant commanding him to bring the person alleged to be restrained before the Court at a time and place therein specified, at which time

the Court shall proceed in a summary manner to hear the matter and render judgment accordingly. If the writ is not issued, the Court shall state its reason therefor in writing and file the same with the complaint and shall deliver a copy thereof to the plaintiff. If the defendant cannot be found, or if he does not have such person in custody, the writ (and any other process issued) may be served upon anyone having such person in custody, in the manner and with the same effect as if he had been made defendant in the action.

The defendant shall appear at the proper time and place with the person designated or show good cause for not doing so and must answer the complaint within the time allowed. The answer must state plainly and unequivocally whether he then has, or at any time has had, the person designated under his control and restraint, and if so, the cause thereof. If such person has been transferred, the defendant must state the fact, and to whom, and when, the transfer was made, and the reason or authority therefor. The writ shall not be disobeyed for any defect of form or misdescription of the person restrained or defendant, if enough is stated to show the meaning and intent thereof.

The person restrained may waive his right to be present at the hearing, in which case the writ shall be modified accordingly. Pending a determination of the matter the Court may place such person in the custody of such individual, or individuals as may be deemed proper.

C. Habeas Corpus: Decision:

In each case, the Court, upon determining the case, shall enter specific findings of fact and conclusions of law and judgment, in writing, and the same shall be made a part of the record in the case. If the Court finds in

favor of the complainant, it shall enter an appropriate order with respect to judgment or sentence in the former proceedings and such further orders with respect to re-arraignment, retrial, custody, bail, or discharge as the Court may deem just and proper in the case.

Rule 374.4.11 Execution of Judgments.

A. Time:

After entry of a judgment against a party or after final resolution of an appeal for which a stay of judgment had been ordered, the judgment creditor may petition the Court for a writ of execution to enforce his judgment. If five (5) years have passed since a judgment was entered, and no writ of execution has been issued, the Court may issue a writ of execution only if just and sufficient reasons are given for failure to obtain a writ in the previous five years.

B. Property Subject to Writ of Execution:

All wages, money, goods, chattels, or other property, both real and personal are subject to a Writ of Execution under this Rule. All property, not exempt under Section (C) of this rule as well as all property seized and held under attachment in an action are subject to execution. Only property belonging to the judgment debtor is subject to execution.

C. Exemptions:

The following property is exempt from execution, except as otherwise specifically provided when selected and reserved by the judgment debtor or his agent at the time of the levy, or as soon after levy and before sale as the existence of the levy becomes known to him:

1. The income of the judgment debtor, regardless of when it became payable, for work performed during the preceding 30 days, or otherwise earned or inured to his benefit within the 30-day period; the 30-day period shall be reckoned back from the date of the levy, but the exemption may not exceed \$350 if he is the head of a family, and the amount of \$200 if he is not this head of a family; the amount of the exemption shall be computed after deductions and payments, required by law or court order, so as to assure the judgment debtor the receipt of the first \$350 per month if he is the head of a family or \$200 if he is not the head of a family, when it appears by the debtor's affidavit or otherwise that the income is necessary for his use or for the use of his family which is supported in whole or in part by his income;

2. Books, pictures, and musical instruments belonging to the judgment debtor not to exceed \$300 in value;

3. Necessary wearing apparel belonging to the judgment debtor for the use of himself or his family; watches or jewelry not to exceed \$200 in value;

4. The tools, implements, apparatus, motor vehicles, books, office furniture, business files, animals, laboratory, and any other article necessary to enable any person to carry on the trade, occupation, or profession by which that person habitually earns his living to the value of \$2,500,

including sufficient quantity of food to support the animals, if any, for six months;

5. The following property belonging to the judgment debtor and in actual use or kept for use by and for his family: animals, household goods, furniture, and utensils to the value of \$1,200, including food sufficient to support the animals, if any, for six months, and provisions actually provided for family use and necessary for the support of that person and family for six months;

6. All property of a public or municipal corporation;

7. No article of property mentioned in this section is exempt from execution issued on a judgment recovered for its price, and, in the event the article of property has been sold or exchanged for other property, the proceeds of the sale or the article for which it was exchanged is not exempt from execution.

D. Procedure for Identification:

After petitioning the Court for a writ of execution, the judgment creditor shall, if possible, identify property of the judgment debtor of value to satisfy the judgment. Such identification shall be made in a sworn affidavit and shall not include exempt property.

The Court shall then order the judgment debtor to appear and identify under oath all of his exempt and non-exempt property, or at least property subject to the action. If a

judgment debtor claims certain property is exempt, he must provide information to support his claim. Failure of the judgment debtor to appear and provide information shall be deemed a contempt of Court, and unless other interested parties (e.g., spouse, children, parents) come forward with information, no property of the judgment debtor will be held as exempt from execution. The judgment debtor must appear before the Court within five working days of the order to appear, unless the Court is given good reasons for his failure to appear.

The Court may issue a writ of execution solely upon the affidavit of the judgment creditor, if some evidence is present to show that the property in fact belongs to the judgment debtor.

E. Substance of Writs:

Writs of execution may be against the property of the judgment debtor, another against his person, and a third for the delivery of the possession of real or personal property, including damages for withholding the property. Upon determination of what property is available for execution, the Court shall issue the necessary writ(s) and order the Northern Cheyenne Police Department to carry out the orders in the writ; specifically, to seize as much non-exempt property belonging to the judgment debtor as reasonably appears necessary to pay the judgment amount. All writs shall direct the Police Department to proceed substantially as follows:

1. If the writ is against the property of the judgment debtor, it shall require the Northern Cheyenne Police to seize as much personal property as necessary to satisfy the debt. If inadequate personal property is available the Court may inform the

B.I.A. and/or Tribal officials of the debtor's debt and require forfeiture of all non-exempt wages and/or money on account for the debtor, and/or judgment money, and/or per capita payments from the Tribe. Such liens on non-exempt property may extend only to interests belonging to the judgment debtor and may be placed in the name of the debtor with the specific agency forfeiting funds for as long a time as is necessary to satisfy the debt owed. All forfeited money shall be turned over to the Court Clerk appropriate Tribal entity for payment to the judgment creditor.

Real property in the name of the judgment debtor may be seized also if it appears the judgment will not be satisfied from other resources within one (1) year.

If personal or real property is seized, the Court shall assign a minimum reasonable value to the property for the purposes of beginning bidding at an auction sale. Notice of an auction sale shall be published in a locally read newspaper at least three (3) times in three weeks, and shall be posted in three conspicuous public places on the reservation for at least three weeks before the sale. The auction sale of seized property shall be conducted by the Northern Cheyenne Police Department. If the minimum price or more is not offered, property shall be held and notice of another sale shall be given. The Court shall re-evaluate the minimum reasonable value.

All money received at auction sales shall be turned over to the

Court Clerk appropriate Tribal entity for payment to the judgment creditor. The Court Clerk shall keep records of all money received and after a judgment is satisfied, any money remaining will be returned to the judgment debtor. Strict records must be kept to avoid the sale of the property unnecessarily. The person conducting the sale shall give all purchasers a certificate of sale and shall file a report with the Court reciting the details of all sales.

2. If the writ is against real or personal property in the hands of the judgment debtor's personal representatives, heirs, devisees, legatees, tenants, or trustees, it shall require forfeiture of the property for sale as set out in section one (1) above. If consent of the judgment debtor is determined to be necessary for release of property, real or personal, the writ shall order the judgment debtor to transfer all property as needed. Refusal of such order shall be deemed contempt of court, and all necessary action may be taken to enforce the order.

3. If the writ is against the person of an absconding judgment debtor, it shall require the Northern Cheyenne Police to arrest the debtor and commit him to jail until he pays the judgment, with interest, or is discharged according to law. If the writ is against the person of any judgment debtor and the application for the writ is made under oath, upon probable cause, and describing the things to be seized as in a warrant, the officer may search and seize valuables from that debtor.

4. If the writ is for the delivery of the possession of real or personal property, it shall require the Northern Cheyenne Police to deliver the possession of the property, describing it to the party entitled to it, and may at the same time require the Northern Cheyenne Police to satisfy any costs, charges, damages, rents, or profits recovered by that judgment out of the personal property of the person against whom it was rendered, and the value of the property for which the judgment was recovered to be specified in the writ, if a delivery cannot be had; and, if sufficient personal property cannot be found, then out of the real property as provided in (1) of this section.

5. All writs must identify the judgment debtor, the amount of the judgment owed, the right of the debtor to exempt certain property, and the right of the debtor to appeal the judgment if he/she has not already done so. The Court may also affix interest at 8% of amounts still owing and provide for writs of execution to collect such interest.

6. When garnishing wages as set out in section one (1) above, employers must pay non-exempt wages to the Court Clerk each month up to the amount of the judgment or be held in contempt of court. Avoidance of this duty shall be allowed only if good reasons are **shown upon motion and/or hearing before the Court.**

In addition to the exemptions set out in Section (C) of this rule, taxes and other legitimate withholdings may be withheld

prior to payment pursuant to a Court ordered writ of execution.

Writs of execution shall be enforceable against all individuals working on the reservation, including Tribal and U.S. Government employees. All writs issued for the garnishment of wages shall continue as liens against subsequent earnings until a judgment is satisfied, or until the employment relationship involved is terminated.

F. Redemption from Sale

At any time within six (6) months after the sale under this Rule, the judgment debtor may redeem his property, personal or real, from the purchaser thereof or from any subsequent successors in interest, by paying the amount such purchaser or successor paid for the property plus eight (8) percent interest, plus any expense actually incurred by the purchaser, such. as taxes and insurance, to maintain the property.

G. Judgment Debtor's Property Owned with Another

1. If an individual judgment debtor owns property jointly with another, a judgment creditor may obtain a writ of execution and force a sale of the debtor's interest, provided the property is not exempt under this Rule. An individual who jointly owns property with a judgment debtor shall have the right to meet the highest bid at an auction sale, and thereby obtain the judgment debtor's interest.

2. A partner's right in specific partnership property is exempt except on a claim against the partnership. If partnership property

is attached for a partnership debt the partners or any of them or the representatives of a deceased partner may not claim an exemption for that property under this rule.

4.4.12. Appeal ~~{As amended by Ord DOI 3(98)}~~

A. Appellate Court

All appeals provided for by this Code or ordinances shall be heard by the Appellate Court of the Northern Cheyenne Court.

B. Right to Appeal

Any party who is aggrieved by any final order, commitment, or judgment of the lower Trial Court may appeal in the manner prescribed by Chapters ~~5, 6, and 7 3, 4 and 5~~ of ~~Title II, Appellate Code~~ and this Rule.

C. Bond on Appeal

At the time of filing the Request for Appeal, the appellant shall also file cash or a bond in an amount set by the lower Trial Court sufficient to guarantee performance of the judgment if such performance is stayed on appeal plus, in any event, an amount sufficient to guarantee payment of such costs or interest as the Appellate Court may award.

D. Stay Pending Appeal

In any case in which an appeal is perfected as required by this Rule, the appellant may petition the lower Trial Court for an order staying the order, commitment or judgment rendered conditioned upon execution of a bond to guarantee performance of the judgment, order or commitment. A stay shall be granted in all cases in which it is

requested unless manifest injustice would result therefrom.

E. Clerk

The Court Clerk shall also serve as the Clerk of the Appellate Court. The Clerk shall prepare, certify, and file with the Appellate Court all papers comprising the record of the case appealed. A separate docket shall be maintained for the Appellate Court in which shall be recorded each stage of the proceeding on each case appealed.