WINNEBAGO TRIBAL CODE
TABLE OF CONTENTS

WINNEBAGO TRIBE OF NEBRASKA

TRIBAL CODE

TITLE	DESCRIPTION
1	COURT RULES
2	CIVIL PROCEDURE
3	CRIMINAL CODE
4	JUVENILE PROCEDURE
5	TRIBAL GOVERNMENT
6	CIVIL TRAFFIC CODE
7	HEALTH, SAFETY, AND WELFARE
8	NATURAL RESOURCES
9	GAMING
10	GENERAL REVENUE AND TAX CODE
11	BUSINESS CORPORATION CODE
11A	BUSINESS REGULATION AND ECONOMIC DEVELOPMENT
11B	LIMITED LIABILITY COMPANY CODE
12	FAMILY RELATIONS
13	TRIBAL EMPLOYMENT RIGHTS ORDINANCE (TERO) [REPEALED]
14	PROBATE
15	UTILITIES
16	CIVIL TRESPASS
17	INTERESTS IN REAL PROPERTY
18	GUARDIANSHIP AND CONSERVATORSHIP

WINNEBAGO TRIBAL CODE
TABLE OF CONTENTS

TITLE 1
COURT RULES
(As redesignated July 1, 1989)

ARTICLE 1
PRELIMINARY PROVISIONS

1-100 Authorization.
1-101 Definitions.
1-102 Territorial jurisdiction.
1-103 Criminal jurisdiction.
1-104 Personal jurisdiction.
1-105 Jurisdiction over property.
1-106 General subject matter jurisdiction-limitations.
1-107 Civil jurisdiction.
1-108 Juvenile jurisdiction.
1-109 Law to be applied.
1-110 Exclusive jurisdiction.
1-111 Constitutional authority.
1-112 Name of Code.
1-113 Prior inconsistent ordinances repealed.
1-114 Amendment of Code.

TITLE 1
ARTICLE 2
ESTABLISHMENT OF COURTS
Judges and other Court Personnel

1-201 Trial Court established.
1-202 Court of appeals. Appeal of right.
1-203 Tribal Court judges.
1-204 Minimum qualifications of Judge of the Tribal Court.
1-204.1 Change in qualifications.
1-205 Manner of selection of Tribal Judges.
1-206 Term of office.
1-207 Compensation of judges.
1-208 Oath of office.
1-209 Duties and powers of judges.
1-210 Disqualifications of judges.
1-211 Removal of judges.
1-212 Decisions.
1-213 Records.
1-214 Files.
1-215 Motion day.
1-216 Court clerk establishment.
1-217 Clerk as department director.
1-218 Powers and duties.
1-219 Oath of clerks.
1-220 Seal.
1-221 Certification of true copies.
1-222 Clerk to serve Tribal and all other Courts.
1-223 Courts always open.
1-224 Trials and hearing—orders in chambers.
1-225 Clerk's office and orders of the clerk.
1-226 Notice of orders or judgments.
1-227 Books and records kept by the clerk and entries therein.
1-228 Stenographic report or transcript as evidence.
1-229 Judgment docket.
1-230 Execution docket.
1-231 Clerk may collect judgment and costs.
1-232 Clerk to issue writs and orders.
1-233 Clerk to file and preserve papers.
1-234 Each case to be kept separate.
1-235 Endorsements.
1-236 Entry on return of summons.
1-237 Material for record.
1-238 Memorializing record.
1-239 Clerk to keep Court records, books, and papers, statistical and other information.
1-240 Applicable to all Courts within Tribe's jurisdiction.
1-241 Bonds.
1-242 Probation and parole officers.
1-243 Creation of prosecutor's office.
1-244 Functions of the prosecutor(s).
1-245 Creation of defender's office.
1-246 Functions of the defender(s).

WINNEBAGO TRIBAL CODE
TABLE OF CONTENTS

TITLE 1
ARTICLE 3
WINNEBAGO SUPREME COURT
RULES OF APPELLATE PROCEDURE
APPLICABILITY OF RULES

Rule 1 Scope of rules.
Rule 2 Suspension of rules.
Rule 3 Appeal as of right—how taken.
Rule 4 Appeal as of right—when taken.
Rule 5 Reserved for provisions relating to interlocutory appeals in civil actions.
Rule 6 Reserved for provisions relating to interlocutory appeals in criminal actions.
Rule 7 Bond for costs on appeal in civil cases.
Rule 8 Stay or injunction pending appeal.
Rule 9 Release in criminal cases.
Rule 10 The record on appeal.
Rule 11 Transmission of record.
Rule 12 Docketing the appeal; filing the record.
Rule 13 Reserved.
Rule 14 Reserved.
Rule 15 Reserved.
Rule 16 Reserved.
Rule 17 Reserved.
Rule 18 Reserved.
Rule 19 Reserved.
Rule 20 Reserved.
Rule 21 Writs.
Rule 22 Habeas corpus proceedings.
Rule 23 Custody of prisoners in habeas corpus proceedings.
Rule 24 Proceedings in forma pauperis.
Rule 25 Filing and service.
Rule 26 Computation and extension of time.
Rule 27 Motion.
Rule 28 Briefs.
Rule 29 Brief of an amicus curiae.
Rule 30 Appendix to the briefs.
Rule 31 Filing and service of briefs.
Rule 32 Form of briefs, the appendix, and other papers.
Rule 33 Prehearing conference.
Rule 34 Oral argument.
Rule 35 Determination of causes by the court en banc.
Rule 36 Entry of judgment.
Rule 37 Interest on judgments.
Rule 38 Damages for delay.
Rule 39 Costs.
Rule 40 Petition for rehearing.
Rule 41 Issuance of mandate.
Rule 42 Voluntary dismissal
Rule 43 Substitution of parties.
Rule 44 Cases involving constitutional or Indian civil rights act question where the Winnebago Tribe is not a party.

TITLE 1
ARTICLE 4
COUNSELORS AND PROFESSIONAL ATTORNEYS

1-400 Lay counsel.
1-401 Right to be represented by an attorney.
1-402 Eligibility for admission.
1-403 Procedure for admission.
1-404 Disbarment and discipline.
1-405 Standards of conduct and obligations for attorneys and lay counsel.
1-406 Oath of attorneys and lay counselors.

TITLE 1
ARTICLE 5
CONTEMPTS

1-500 Acts or failures to act which contribute contempt of Court.
1-501 Civil contempt.
1-502 Criminal contempt.
1-503 Contempt procedure.

TITLE 1
ARTICLE 6
SELECTION OF JURORS

1-600 Eligibility for jury selection.
1-601 Jury lists.
1-602 Jury panel selection procedures.
1-603 Power to excuse jurors.
1-604 Compensation to jurors.

TITLE 1
ARTICLE 7
JUDICIAL CONDUCT

1-700 Adoption of Code of Judicial Conduct.
1-701 Canon 1.
1-702 Canon 2.
1-703 Canon 3.
1-704 Canon 4.
1-705 Canon 5.
1-706 Canon 6.
1-707 Canon 7.
1-708 Compliance with Code of Judicial Conduct.

TITLE 1
ARTICLE 8
BONDS AND SURETIES

1-800 Justification of surety.
1-801 Qualifications of surety.
1-802 Real estate mortgage as bond.
1-803 Valuation of real estate.
1-804 False valuation—penalty.
1-805 Action by Tribe or Tribal department—no bond required.
1-806 Appearance bond—enforcement.

WINNEBAGO TRIBAL CODE
TABLE OF CONTENTS

TITLE 1
ARTICLE 9
MISCELLANEOUS

1-900 Deputy may perform official duties.
1-901 Affirmation.
1-902 Publication in "patent insides."
1-903 Action on official bond.
1-904 May be several actions on same security.
1-905 Immaterial errors to be disregarded.
1-906 Payments into Court for minors and incompetents.
1-907 Conserving moneys obtained for minors or incompetent persons.
1-908 Sharing of judicial officers.
1-909 Sharing of other judicial personnel.
1-910 Sharing of material resources.
1-911 Sharing of financial resources.
1-912 Repealed by TCR 93-85.
1-913 Copies of laws.
1-914 Cooperation by federal employees.
1-915 Effect of prior decisions of the Court.
1-916 Judicial review of legislative and executive actions.
1-917 Action when no procedure provided.
1-918 Adoption by reference not a waiver of sovereign power of the Tribe.
1-919 Actions by or against Tribe or its officers.
1-920 Actions by or against Tribe or its officers or employees.
1-921 Principles of construction.

TITLE 1
ARTICLE 10
OFFICE OF THE GENERAL COUNSEL

1-1000 Office established.
1-1001 Duties.
1-1002 Delegation of duties.
1-1003 Engagement of outside legal counsel.
1-1004 Title of Attorney General.

TITLE 1
ARTICLE 11
TRADITIONAL WELLNESS COURT
(Amended August 29, 2011)

1-1101 Construction.
1-1102 Purpose.
1-1103 Traditional Wellness Court established.
1-1104 Personal and subject matter jurisdiction.
1-1105 Appointment of Wellness Court Panel Members.
1-1106 Referral process.
1-1107 Reports to Tribal Court.
1-1108 Nature of cases to be decided by the Traditional Wellness Court.
1-1109 Powers and duties of Traditional Wellness Court Panel Members.
1-1110 Powers and duties of the Traditional Wellness Court Coordinator.
1-1111 Intake process.
1-1112 Procedures.
1-1113 Records and confidentiality.
1-1114 Completion of Proceedings.
1-1115 Destruction of Records.
1-1116 Appeals.

WINNEBAGO TRIBAL CODE
TABLE OF CONTENTS

TITLE 1A
WINNEBAGO RULES OF EVIDENCE
As amended March 1, 1993.
(Redesignated February 24, 1994)

ARTICLE 1A
GENERAL PROVISIONS

Rule 1A-101 Scope.
Rule 1A-102 Purpose and construction.
Rule 1A-103 Rulings on evidence.
Rule 1A-104 Preliminary questions.
Rule 1A-105 Limited admissibility.
Rule 1A-106 Remainder of or related writings or recorded statements.

TITLE 1A
ARTICLE 2
JUDICIAL NOTICE

Rule 1A-201 Judicial notice of adjudicative facts.

TITLE 1A
ARTICLE 3
PRESUMPTIONS

Rule 1A-301 Presumptions in general in civil actions and proceedings.
Rule 1A-302 Applicability of state law in civil actions and proceedings.

TITLE 1A
ARTICLE 4
RELEVANCY AND ITS LIMITS

Rule 1A-401 Definition of relevant evidence.
Rule 1A-402 Relevant evidence generally admissible; irrelevant evidence inadmissible.
Rule 1A-403 Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time.
Rule 1A-404 Character evidence: not admissible to prove conduct; exceptions; other crimes.
Rule 1A-405 Methods of proving character.
Rule 1A-406 Habit; routine practice.
Rule 1A-407 Subsequent remedial measures.
Rule 1A-408 Compromise and offers to compromise.
Rule 1A-409 Payment of medical and similar expenses.
Rule 1A-410 Inadmissibility of pleas, offers of pleas, and related statements.
Rule 1A-411 Liability Insurance.
Rule 1A-412 Sex offenses cases: relevance of victim's past behavior.

TITLE 1A
ARTICLE 5
[RESERVED]

TITLE 1A
ARTICLE 6
WITNESSES
(Revised March 9, 2011)

Rule 1A-601 General rule of competency.
Rule 1A-602 Lack of personal knowledge.
Rule 1A-603 Oath or affirmation.
Rule 1A-604 Interpreters.
Rule 1A-605 Competency of judge as witness.
Rule 1A-606 Competency of juror as witness.
Rule 1A-607 Who may impeach.
Rule 1A-608 Evidence of character and conduct of witness.
Rule 1A-609 Impeachment by evidence of conviction of crime.
Rule 1A-610 Religious beliefs or opinions.
Rule 1A-611 Mode and order of interrogation and presentation.
Rule 1A-612 Writing used to refresh memory.
Rule 1A-613 Prior statements of witnesses.
Rule 1A-614 Calling and interrogation of witnesses by Court.
Rule 1A-615 Exclusion of witnesses.
Rule 1A-616 Patient/Client - Physician/Counselor Privilege.

TITLE 1A
ARTICLE 7
OPINION AND EXPERT TESTIMONY

Rule 1A-701 Opinion testimony by lay witnesses.
Rule 1A-702 Testimony by experts.
Rule 1A-703 Bases of opinion testimony by experts.
Rule 1A-704 Opinion on ultimate issue.
Rule 1A-705 Disclosure of facts or data underlying expert opinion.
Rule 1A-706 Court appointed experts.

TITLE 1A
ARTICLE 8
HEARSAY

Rule 1A-801 Definitions.
Rule 1A-802 Hearsay rule.
Rule 1A-803 Hearsay exceptions; availability of declarant immaterial.
Rule 1A-804 Hearsay exceptions; declarant unavailable.
Rule 1A-805 Hearsay within hearsay.
Rule 1A-806 Attacking and supporting credibility of declarant.

TITLE 1A
ARTICLE 9
AUTHENTICATION AND IDENTIFICATION

Rule 1A-901 Requirement of authentication or identification.
Rule 1A-902 Self-authentication.
Rule 1A-903 Subscribing witness' testimony unnecessary.

TITLE 1A
ARTICLE 10
CONTENTS OF WRITINGS, RECORDINGS AND PHOTOGRAPHS

Rule 1A-1001 Definitions.
Rule 1A-1002 Requirement of original.
Rule 1A-1003 Admissibility of duplicates.
Rule 1A-1004 Admissibility of other evidence of contents.
Rule 1A-1005 Public records.
Rule 1A-1006 Summaries.
Rule 1A-1007 Testimony or written admission of party.
Rule 1A-1008 Functions of Court and jury.

TITLE 1A
ARTICLE 11
MISCELLANEOUS RULES

Rule 1A-1101 Applicability of rules.
Rule 1A-1102 Amendments.
Rule 1A-1103 Title.

WINNEBAGO TRIBAL CODE
TABLE OF CONTENTS

TITLE 1B
RULES OF CRIMINAL PROCEDURE
(Redesignated February 24, 1994)

ARTICLE 1
SCOPE, PURPOSE, AND CONSTRUCTION

Rule 1B-101 Scope, purpose and construction.

TITLE 1B
ARTICLE 2
PRELIMINARY PROVISIONS

Rule 1B-201 Prosecution of offenses.
Rule 1B-202 Rights of defendant.
Rule 1B-203 Limitation of prosecution.
Rule 1B-203.1 Time computations.
Rule 1B-204 Extradition.

TITLE 1B
ARTICLE 3
PROCEEDINGS BEFORE TRIAL

Rule 1B-301 The complaint.
Rule 1B-302 Arrest warrant or summons to appear: contents; service.
Rule 1B-302.1 Service of arrest warrants and summons.
Rule 1B-302.2 Citation instead of arrest.
Rule 1B-303 Search and seizure.
Rule 1B-304 Arrest.
Rule 1B-304.1 Arrest in hot pursuit.
Rule 1B-304.2 Limitations on arrest in the home.
Rule 1B-304.3 Notification of rights.
Rule 1B-304.4 Telephone calls.
Rule 1B-305 Arraignment.
Rule 1B-306 Pre-trial divers.
Rule 1B-307 Commitments.
Rule 1B-308 Bail.
Rule 1B-309 Joinder.
Rule 1B-310 Pleas.
Rule 1B-310.1 Withdrawing guilty plea.
Rule 1B-310.2 Plea Bargaining.
Rule 1B-311 Pleading and motions before trial: defenses and objections.
Rule 1B-312 Joinder of offenses.
Rule 1B-313 Discovery and inspection.
Rule 1B-314 Subpoena.
Rule 1B-315 Dismissal.

TITLE 1B
ARTICLE 4
TRIAL

Rule 1B-401 Trial by jury or by the Court.
Rule 1B-402 Trial jurors.
Rule 1B-403 Order of trial.
Rule 1B-404 Trial by judicial panel.
Rule 1B-405 Judge disability.
Rule 1B-406 Evidence.
Rule 1B-407 Expert witnesses and interpreters.
Rule 1B-408 Motion for judgment of acquittal; directed verdict.
Rule 1B-409 Instructions.
Rule 1B-410 Verdict.
Rule 1B-411 Regulation of conduct in the Courtroom.
Rule 1B-412 Harmless error and plain error.

TITLE 1B
ARTICLE 5
JUDGMENT
(As revised February 19, 2014)

Rule 1B-50l Judgment.
Rule 1B-502 Sentence.
Rule 1B-503 General sentencing provisions.
Rule 1B-504 New trial.
Rule 1B-505 Arrest of judgment.
Rule 1B-506 Correction or reduction of sentence.
Rule 1B-507 Clerical mistakes.

TITLE 1B
ARTICLE 6
APPEAL

Rule 1B-601 Right of appeal; how taken.
Rule 1B-602 Stay of judgment and relief pending review.

TITLE 1B
ARTICLE 7
MISCELLANEOUS PROVISIONS
(As revised February 19, 2014)

Rule 1B-701 Continuance.
Rule 1B-702 Disbursement of money and valuables collected.
Rule 1B-703 Habeas corpus.
Rule 1B-704 Disposition of seized property.
Rule 1B-705 Designation of offenses.
Rule 1B-706 Maximum fines and sentences, payment schedules; credit.
Rule 1B-707 Bail schedule for Class III offenses.
Rule 1B-708 Diversion and probation costs.
Rule 1B-709 Sex offenders.
Rule 1B-710 Additional findings for sex offenses.

WINNEBAGO TRIBAL CODE
TABLE OF CONTENTS

TITLE 1C
ARTICLE 1
TRIBAL CHILD SUPPORT GUIDELINES

Rule 1C-101	Guidelines Adopted.
Rule 1C-102	Table.
Rule 1C-103	Purpose.
Rule 1C-104	Temporary and Permanent Support.
Rule 1C-105	Rebuttable Presumption.
Rule 1C-106	Total Monthly Income.
Rule 1C-107	Deductions.
Rule 1C-108	Monthly Support.
Rule 1C-109	Parent's Monthly Share.
Rule 1C-110	More Than One Child.
Rule 1C-111	Minimum Support.
Rule 1C-112	Non-Cash Support.
Rule 1C-113	Visitation or Parenting Time Adjustments.
Rule 1C-114	Split Custody.
Rule 1C-115	Joint Physical Custody.
Rule 1C-116	Alimony.
Rule 1C-117	Child-Care Expenses.
Rule 1C-118	Child(ren)’s Health Insurance and Nonreimbursed Health Care Expenses.
Rule 1C-119	Modification.
Rule 1C-120	Basic Subsistence Limitation.
Rule 1C-121	Limitation on Increase.
Rule 1C-122	Limitation on Decrease.
Rule 1C-123	Maintenance and Review of Guidelines.

WINNEBAGO TRIBAL CODE
TABLE OF CONTENTS

TITLE 1D
BANISHMENT AND EXCLUSION CODE

Adopted June 16, 2010
Redesignated June 21, 2010
Repealed July 5, 2016
[TCR 10-110; 10-112; 16-106]

WINNEBAGO TRIBAL CODE
TABLE OF CONTENTS

TITLE 2
CIVIL PROCEDURE
(As redesignated February 24, 1994)

ARTICLE 1
GENERAL PROVISIONS

2-101 Scope of this Act.
2-102 Jurisdiction in civil actions.
2-103 Title of this Act.
2-104 Force of the Tribal common law
2-105 Definitions.
2-106 No effect upon sovereign immunity.
2-107 Declaratory judgment.
2-108 Court costs not charged to Tribe.
2-109 Effect of previous Court decisions.
2-110 C.F.R. not applicable.
2-111 Laws applicable to civil action.
2-112 Court action when no procedure provided.

TITLE 2
ARTICLE 2
COMMENCEMENT OF ACTION;
PLEADINGS, MOTIONS AND ORDERS

2-201 Commencement of action.
2-202 One form of action.
2-203 “Claim” defined.
2-204 Notice of pendency of action.
2-205 Notice of pendency contingent upon service.
2-206 Special notice for actions pending in other Courts.
2-207 Pleadings allowed; form of motions.
2-208 General rules of pleading.
2-209 Pleading special matters.
2-210 Form of pleadings, motions, and briefs.
2-211 Signing of pleadings.
2-212 Defenses and objections—when and how presented--by pleadings or motions--motion for judgment on the pleadings.
2-213 Final dismissal on failure to amend.
2-214 Counterclaim and cross-claim.
2-215 Counterclaim: effect of the statute of limitations.
2-216 Counterclaims against assigned claims.
2-217 Third-party practice.
2-218 Amended and supplemental pleadings.
2-219 Pre-trial procedure; formulating issues.
2-220 Lost pleadings.
2-221 Tenders of money or property.
2-222 Dismissal of actions.

TITLE 2
ARTICLE 3
PROCESS, SUMMONS, FILING OF PLEADINGS AND OTHER PAPERS

2-301 Issuance of summons.
2-302 Form of summons.
2-303 Who may serve process personally.
2-304 Service of process by mail.
2-305 Service by publication.
2-306 Publication service upon parties and the unknown successors of named parties.
2-307 Publication notice for recovery of money.
2-308 Publication notice in quiet title actions.
2-309 Completion of publication service.
2-310 Entry of default on party served by publication.
2-311 Vacating default judgments where service is by publication.
2-312 Certain technical errors not grounds for vacating judgment.
2-313 Meaning of “successors” for publication purposes.
2-314 Minimum contacts required for effective long arm service.
2-315 Consent is effective substitute for service.
2-316 Service pursuant to Court order.
2-317 Summons and complaint; person to be served.
2-317.1 Effect of service of some of several defendants.
2-318 Service upon party not inhabitant of or found within the territorial limits of the reservation.
2-319 Territorial limits of effective service.
2-320 Return of service of process.
2-321 Alternative provisions for service in a foreign country.
2-322 Subpoena.
2-330 Summons; time limit for service.
2-331 Service and filing of pleadings and other papers.
2-340 Time.
2-341 General cases in which extraterritorial service authorized.
2-342 Legal newspaper.

TITLE 2
ARTICLE 4
PARTIES

2-401 Parties plaintiff and defendant: capacity.
2-402 Joinder of claims, remedies, and actions.
2-403 Joinder of persons needed for just adjudication.
2-404 Permissive joinder of parties.
2-405 Misjoinder and non-joinder of parties.
2-406 Interpleader.
2-407 Class actions.
2-408 Derivative actions by shareholders and members.
2-409 Intervention.
2-410 Substitution of parties.

TITLE 2
ARTICLE 5
DEPOSITIONS AND DISCOVERY

2-501 General provisions governing discovery.
2-502 Depositions before action or pending appeal.
2-503 Persons before whom depositions may be taken.
2-504 Stipulations regarding discovery procedure.
2-505 Depositions upon oral examination.
2-506 Depositions upon written questions.
2-507 Use of depositions in Court proceedings.
2-508 Interrogatories to parties.
2-509 Production of documents and things and entry upon land for inspection and other purposes.
2-510 Physical and mental examination of persons.
2-511 Requests for admission.
2-512 Failure to make or cooperate in discovery: sanctions.

TITLE 2
ARTICLE 6
WITNESSES

2-601 Issue and service of subpoena for witnesses.
2-602 Subpoenas--contents.
2-603 Subpoena for deposition.
2-604 Subpoena for agency hearings.
2-605 Witness may demand fees--exception.
2-606 Disobedience of subpoena.
2-607 Attachment of witness.
2-608 Punishment for contempt.
2-609 Discharge when imprisonment illegal.
2-610 Requisites of attachment--order of commitment.
2-611 Examination of prisoner.
2-612 Prisoner’s custody during examination.
2-613 Witness privileged.
2-614 Witness may demand fees each day--exception.
2-615 Special provisions for Tribal agencies.

TITLE 2
ARTICLE 6, WITNESSES
SUBPART A
TESTIMONY UNDER PRIVILEGE AGAINST PROSECUTION

2-650 Privilege for committee testimony.
2-651 Procedure for claiming privilege.
2-652 Oaths.
2-653 Penalties.
2-654 Disgrace as ground for refusal to testify.
2-655 Prosecution.
2-656 Fees and mileage.

TITLE 2
ARTICLE 7
JURORS

2-701 Meeting for selection of jurors.
2-702 Court clerk's jury selection roll.
2-703 Preparation of jury wheel.
2-704 Drawing general jury panel.
2-705 Use of a jury panel.
2-706 Certifying and sealing lists.
2-707 Oath and delivery of envelopes.
2-708 Sealing and retaining juror name cards.
2-709 Refilling wheel.
2-710 Summoning jurors.
2-711 On-call system jurors.
2-712 Drawing trial jurors from panel.
2-713 Qualifications and exemptions of jurors.
2-714 Substantial compliance.
2-715 Oath to jury.
2-721 Discharge of employee for jury service--penalty.
2-722 Civil liability--damages.

TITLE 2
ARTICLE 8
TRIAL

2-801 Trial defined.
2-802 Trial of issues.
2-803 Jury trial of right.
2-804 Trial by jury or by the Court.
2-805 Assignment of cases for trial.
2-806 Consolidation; separate trials.

TITLE 2
ARTICLE 8, TRIAL
SUBPART A
IMPANELING JURY

2-821 Summoning jury.
2-822 Causes for challenging jurors.
2-823 Examination of jurors.
2-824 Alternate jurors.
2-825 Order of challenges.
2-826 Challenges to jurors – filling vacancies.
2-827 Alternate method of selecting jury.
2-828 Oath of jury.
2-829 Juries of less than six-majority verdict.

TITLE 2
ARTICLE 8, TRIAL
SUBPART B
TRIAL PROCEDURES

2-831 Order of trial.
2-832 Taking of testimony.
2-833 Exceptions unnecessary.
2-834 Instructions to jury objection.
2-835 Uniform jury instructions.
2-836 Objections to instructions--copies to parties.
2-837 View by jury.
2-838 Deliberation of the jury.
2-839 Admonition of jury on separation.
2-840 Information after retirement.
2-841 When the jury may be discharged.
2-842 Re-trial.
2-843 Proof of official record.
2-844 Determination of foreign law.
2-845 Appointment and duties of masters.

TITLE 2
ARTICLE 8, TRIAL
SUBPART C
VERDICT

2-851 Findings by the Court.
2-852 Delivery of verdict.
2-853 Requisites of verdicts.
2-854 General and special verdict.
2-855 Special verdict and interrogatories.
2-856 Jury must assess amount of recovery.
2-857 Motions for a directed verdict and for judgment notwithstanding the verdict.

TITLE 2
ARTICLE 8, TRIAL
SUBPART D
MISCELLANEOUS TRIAL PROVISIONS

2-871 Provisions applicable to trials by Court.
2-872 Trial docket.
2-873 Trial docket for bar.
2-874 Order of trial of cases docketed.
2-875 Time of trial.
2-876 Continuances.
2-877 Trial by judicial panel.
2-878 Bifurcated jury trials.

TITLE 2
ARTICLE 9
PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

2-901 Seizure of person or property.
2-902 Receivers appointed by Tribal Courts.
2-903 Deposit in Court.
2-904 Process in behalf of and against persons not parties.
2-905 Security--proceedings against sureties.
2-906 Execution.

TITLE 2
ARTICLE 9, PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS
SUBPART A
INJUNCTIONS

2-911 Injunction defined.
2-912 Cause for injunction—temporary restraining order.
2-913 Temporary restraining order; notice; hearing; duration.
2-914 Temporary restraining order--Service.
2-915 Preliminary injunction.
2-916 Preliminary injunction--criteria.
2-917 Form and scope of injunction or restraining order.
2-918 Employer and employee; interpleader; constitutional cases.
2-919 Security.
2-920 Use of affidavits.
2-921 Injunction by defendant.
2-922 Injunction is equitable.
2-923 Modification of preliminary injunction.
2-924 Modification of permanent injunction.
2-925 Injunctions tried to the Court.
2-926 Enforcement of restraining orders and injunctions.

TITLE 2
ARTICLE 9, PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS
SUBPART B
REPLEVIN

2-931 Order of delivery--procedure.
2-932 Penalty for damage of property subject to order of delivery.
2-933 Undertaking in replevin.
2-934 Replevin bond--value.
2-935 Order of delivery.
2-936 Order returnable.
2-937 Execution or order.
2-938 Re-delivery on bond.
2-939 Exception to sureties.
2-940 Proceedings on failure to prosecute action.
2-941 Judgment--damages--attorney fees.
2-942 Officer may break into building.
2-943 Compelling delivery by attachment.
2-944 Improper issue of order of delivery.
2-945 Joinder of cause of action for debt--stay of judgment.

TITLE 2
ARTICLE 9, PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS
SUBPART C
ATTACHMENT

2-951 Grounds for attachment.
2-952 Attachment affidavit.
2-953 Attachment bonds.
2-954 Order of attachment.
2-955 When returnable.
2-956 Order of execution.
2-957 Execution of attachment order.
2-958 Service of order.
2-959 Re-delivery on bond.

TITLE 2
ARTICLE 9, PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS
SUBPART D
GARNISHMENT
(As adopted November 17, 2010)

2-961 Garnishment in aid of execution; when issued; procedure; court order; continuing lien; when invalid.
2-962 Priority of garnishments and liens.
2-963 Service upon garnishee; notice; hearing.
2-964 Answer; interrogatories; response; objections; contempt; hearing.
2-965 Exemptions from garnishment.

TITLE 2
ARTICLE 9, PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS
SUBPART E
PROVISIONS RELATING TO ATTACHMENT AND GARNISHMENT

(Reserved)

TITLE 2
ARTICLE 9, PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS
SUBPART F
RECEIVERS

2-992.1 Appointment of receiver.
2-992.2 Persons ineligible.
2-992.3 Oath and bond.
2-992.4 Powers of receiver.
2-992.5 Investment of funds.
2-992.6 Disposition of property litigated.
2-992.7 Punishment for disobedience of Court.
2-992.8 Vacation of appointment by appellate Court.

TITLE 2
ARTICLE 9, PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS
SUBPART G
EMINENT DOMAIN

2-993.1 Who may exercise authority.
2-993.2 What property may be condemned by eminent domain.
2-993.3 Condemnation of property.
2-993.4 Complaint.
2-993.5 Process in eminent domain.
2-993.6 Appearance or answer.
2-993.7 Amendment of pleadings.
2-993.8 Substitution of parties.
2-993.9 Dismissal of action.
2-993.10 Deposit and its distribution.
2-993.11 Costs.

TITLE 2
ARTICLE 10
JUDGMENT

2-1001 Judgment; costs.
2-1002 Default.
2-1003 Offer of judgment.
2-1004 Judgment for specific acts--vesting title.
2-1005 Summary judgment.
2-1006 Declaratory judgment.
2-1007 Entry of judgment.
2-1008 New trials; amendments of judgments.
2-1009 Relief from judgment or order.
2-1010 Harmless error.
2-1011 Stay of proceedings to enforce a judgment.
2-1012 Disability of a judge.
2-1013 Reserved.
2-1014 Judgment against infant.
2-1015 Judgments as liens.
2-1016 Discharge of money judgment liens.
2-1017 Additional case deposits.
2-1018 Reversal by appellate Court.
2-1019 Interest on money judgments.
2-1020 Exempt property.
2-1020.1 Payment of judgments from individual Indian moneys.

TITLE 2
ARTICLE 10, JUDGMENT
SUBPART A
FOREIGN JUDGMENTS

2-1021 Definition.
2-1022 Filing and status of foreign judgments.
2-1023 Grounds for non-recognition.
2-1024 Notice of filing.
2-1025 Stay of execution of foreign judgment.
2-1026 Fees.
2-1027 Optional procedure.

TITLE 2
ARTICLE 10, JUDGMENT
SUBPART B
EXECUTION

2-1031 Execution--defined.
2-1032 Kinds of executions.
2-1033 Property subject to levy.
2-1034 Property bound after seizure.
2-1035 Execution must be issued within five years.
2-1036 Priority among property.
2-1037 Priority among executions.
2-1038 Levy by priority.
2-1039 Who makes levy.
2-1040 When levy void.
2-1041 Penalty for unlawful levy.
2-1042 Levy on property claimed by third person.
2-1043 Re-delivery to defendant.
2-1044 Notice of sale of chattels.
2-1045 Further levy when property taken, insufficient.
2-1046 Filing and indexing of execution.
2-1047 Waiver of appraisement.
2-1048 Return of appraisement.
2-1049 When lien restricted.
2-1050 Notice of sale of realty.
2-1051 Confirmation of sale.
2-1052 Police chief's deed.
2-1053 Advance of printer's fees.
2-1054 Demand for printing fees.
2-1055 Place of sale.
2-1056 Other executions of realty not sold.
2-1057 Levy on realty under several executions.
2-1058 Deed by successor of officer making sale.
2-1059 Payment to defendant of overplus after sale.
2-1060 Reversal of judgment after sale of interest in land.
2-1061 Execution of judgment in favor of Tribe.
2-1062 Reappraisal where realty twice advertised for sale.
2-1063 Return of execution.
2-1064 Principal and surety.
2-1065 Hearing on assets.

TITLE 2
ARTICLE 10, JUDGMENT
SUBPART C
CONTRIBUTION

2-1071 Joint debtors or sureties.
2-1072 Joint tort-feasor; contribution; indemnity; exemptions; covenant not to sue, etc.

TITLE 2
ARTICLE 10, JUDGMENT
SUBPART D
COSTS

2-1081 Affidavit in forma pauperis.
2-1082 False swearing in such case.
2-1083 Costs where defendants disclaim.
2-1084 Certain costs taxed at discretion of Court.
2-1085 Costs to successful party as matter of course.
2-1086 Costs in other cases.
2-1087 Several actions on joint instruments.
2-1088 Clerk to tax costs.
2-1089 Cost of notice or other legal publication.
2-1090 Attorney fees taxable as costs.
2-1091 Costs defined.
2-1092 Authority of Court to fix cost rates.

TITLE 2
ARTICLE 11
LIMITATION OF ACTIONS

2-1101 Limitations applicable.
2-1102 Limitation of real actions.
2-1103 Persons under disability-- in real property actions.
2-1104 Limitation of other actions.
2-1105 Persons under disability in actions other than real property actions.
2-1106 Absence or flight of defendant.
2-1107 Limitation of new action after failure.
2-1108 Extension of limitation.
2-1109 Statutory bar absolute.
2-1110 Law governing foreign claims.
2-1111 Limitation of building construction tort claims.

TITLE 2
ARTICLE 12
FAMILY RELATIONS

2-1201 Recording of marriages and divorces.
2-1202 Tribal custom marriage and divorce.
2-1203 Tribal custom adoption.
2-1204 Determination of paternity and support.
2-1205 Determination of heirs.
2-1206 Approval of wills.

TITLE 2
ARTICLE 12, FAMILY RELATIONS
SUBPART A
STATUTORY DIVORCE

2-1211 Grounds for divorce.
2-1212 Residence of plaintiff or defendant.
2-1213 Personal jurisdiction.
2-1214 Custody of children, disposition of property.
2-1215 Orders concerning property, children, support and expenses.
2-1216 Care and custody of children.
2-1217 Preference of child.
2-1218 Paternity determination.
2-1219 Interest on delinquent payments.
2-1220 Restoration of wife's maiden name.
2-1221 Disposition of property.
2-1222 Effect of divorce.
2-1223 Remarriage and cohabitation.
2-1224 Punishment for certain remarriage and cohabitation.
2-1225 Remarriage within six months.
2-1226 Time when judgment final.
2-1227 Avoidance of marriage of incompetents.
2-1228 Alimony without divorce.
2-1229 Evidence.
2-1230 Setting aside of divorce decrees.
2-1231 Termination of money payments.
2-1232 Mailing of alimony and support payments.
2-1233 Modification of decree.
2-1234 Effect on common law divorce.
2-1235 Requirement of parenting education.

TITLE 2
ARTICLE 13
FORCIBLE ENTRY AND DETAINER

2-1301 Forcible entry and detention.
2-1302 Powers of Court.
2-1303 Extent of jurisdiction.
2-1304 Issuance and return of summons.
2-1305 Service of summons.
2-1306 Constructive service of summons.
2-1307 Answer or affidavit by defendant.
2-1308 Trial by Court.
2-1309 Procedure where no jury available.
2-1310 Attorney fee.
2-1311 Writ of execution; form; new trial.
2-1312 Stay of execution.
2-1313 Forcible entry and detainer action on small claims docket.
2-1314 Affidavit; form.
2-1315 Summons; form.

TITLE 2
ARTICLE 14
HABEAS CORPUS

2-1401 Persons who may prosecute writ.
2-1402 Application for writ.
2-1403 Writ granted.
2-1404 Direction and command of writ.
2-1405 Delivery to Tribal police chief.
2-1406 Service on party other than Tribal police chief.
2-1407 Service when person not found.
2-1408 Return and enforcement of writ.
2-1409 Manner of return.
2-1410 Proceedings in case of sickness or infirmity.
2-1411 Hearings and discharge.
2-1412 Limits on inquiry.
2-1413 Writ upon temporary commitment.
2-1414 Writ may issue to admit to bail.
2-1415 Notice to interested persons.
2-1416 Powers of Court.
2-1417 Officers not liable for obeying orders.
2-1418 Issuance of warrant of attachment.
2-1419 Arrest of party causing restraint.
2-1420 Execution of warrant of attachment.
2-1421 Temporary orders.
2-1422 Issuance and service on Sunday.
2-1423 Issue of process.
2-1424 Protection of infants and insane persons.
2-1425 Security for costs not required.

TITLE 2
ARTICLE 15
MANDAMUS

2-1501 Function of mandamus.
2-1502 Writ not issued where remedy at law.
2-1503 Forms and contents of writs.
2-1504 When peremptory writ of issues.
2-1505 Petition upon affidavit.
2-1506 Allowance and service of writ.
2-1507 Answer.
2-1508 Failure to answer.
2-1509 Similarity to civil action.
2-1510 Recovery by plaintiff.
2-1511 Damages bar further actions.
2-1512 Penalty for refusal or neglect to perform.

TITLE 2
ARTICLE 16
QUO WARRANTO

2-1601 Quo Warranto; relief obtainable by civil action.
2-1602 Grounds for action.
2-1603 Persons who may bring action.
2-1604 Judgment is contest of office.
2-1605 Judgment for plaintiff.
2-1606 Enforcement of judgment.
2-1607 Separate action for damages.
2-1608 Corporation.

TITLE 2
ARTICLE 17
SMALL CLAIMS PROCEDURE

2-1701 Small claims.
2-1702 Small claims affidavit.
2-1703 Preparation of affidavit.
2-1704 Service of affidavit.
2-1705 Date for appearance.
2-1706 Transfer of actions.
2-1707 Counterclaim or setoff.
2-1708 Actions for amounts exceeding excess of two thousand dollars.
2-1709 Attachment or garnishment, other matters.
2-1710 Trial by Court.
2-1711 Payment of judgment.
2-1712 Appeals.
2-1713 Fees.
2-1714 Costs.
2-1715 Judgments rendered under small claims procedure.
2-1716 Fee for docketing judgment.
2-1717 Other action in small claims Court.

WINNEBAGO TRIBAL CODE
TABLE OF CONTENTS

TITLE 3
CRIMINAL CODE
(As redesignated June 1, 1989)

ARTICLE 1
GENERAL PROVISIONS

3-101 Name and citation.
3-102 Effective date.
3-103 Purpose and construction.
3-104 No affect on civil liability.
3-105 Exclusiveness of offenses.
3-106 Severability.
3-107 Terms, defined.
3-108 Prosecution for multiple offenses.
3-109 Limitation.
3-110 Separate trials.
3-111 Lesser included offenses.
3-112 Double jeopardy.
3-113 Burden and presumption of innocence.
3-114 Negating defenses.
3-115 Presumptions of fact.

TITLE 3
ARTICLE 2
PRINCIPLES OF CRIMINAL RESPONSIBILITY

3-201 Acts and omissions to act.
3-202 Culpability; general requirements.
3-203 Causal relationship between conduct and result.
3-204 Ignorance or mistake of fact.
3-205 Liability for conduct of another.
3-206 Corporation and unincorporated associations.
3-207 Intoxication.
3-208 Duress.
3-209 Consent.
3-210 Entrapment.
3-211 Mental disease or defect.
3-212 Justification; terms defined.
3-213 Justification; choice of evils.
3-214 Public duty; execution.
3-215 Use of force; self-protection.
3-216 Use of force; protection of others persons.
3-217 Use of force; protection of property.
3-218 Use of force; law enforcement.
3-219 Use of force by person with special responsibility for care, discipline or safety of others.
3-220 Mistake of law; reckless or negligent use of force.
3-221 Justification in property crimes.
3-222 Justification an affirmative defense; civil remedies unaffected.

WINNEBAGO TRIBAL CODE
TABLE OF CONTENTS

TITLE 3
ARTICLE 3
CRIMES AGAINST PROPERTY

3-301 Building defined.
3-302 Arson, first degree; penalty.
3-303 Arson, second degree; penalty.
3-304 Arson, third degree; penalty.
3-305 Burning to defraud insurer; penalty.
3-306 Burglary; penalty.
3-307 Possession of burglary tools; penalty.
3-308 Breaking and entering; penalty.
3-309 Theft; terms defined.
3-310 Consolidation of theft offenses.
3-311 Theft by unlawful taking or disposition.
3-312 Theft by shoplifting; penalty.
3-313 Theft by deception.
3-314 Theft by extortion.
3-315 Theft of property lost, mislaid, delivered by mistake; penalty.
3-316 Theft of services; penalty.
3-317 Unauthorized use of a propelled vehicle; affirmative defense; penalty.
3-318 Theft by receiving stolen property.
3-319 Grading of theft offenses.
3-320 Criminal mischief; penalty.
3-321 Criminal trespass; penalty.
3-322 Repealed.
3-323 Criminal trespass, affirmative defenses.
3-324 Littering of public and private property; penalty.
3-325 Forgery; terms defined.
3-326 Forgery, first degree; penalty.
3-327 Forgery, second degree; forgery penalties.
3-328 Criminal possession of a forged instrument; penalty.
3-329 Criminal possession of forgery devices; penalty.
3-330 Criminal simulation; penalty.
3-331 Criminal impersonation; penalty.
3-332 Issuing a bad check; penalty.
3-333 False statement or book entry; destruction or secretion of records; penalty; organization defined.
3-334 Commercial bribery and breach of duty to act disinterestedly; penalty.
3-335 Fraudulent use of credit card; penalty.
3-336 Deceptive business practices; penalty.
3-337 Defrauding creditors; penalty.
3-338 Securing execution of documents by deception; penalty.
3-339 Criminal usury; penalty.
3-340 Unlawful dealing with property by a fiduciary; penalty.
3-341 Making a false credit report; penalty.
3-342 Computers; terms defined.
3-343 Depriving or obtaining property or services; penalty.
3-344 Unlawful acts; harming or disrupting operations; penalties.
3-345 Unlawful acts; obtaining confidential public information; penalties.
3-346 Unlawful acts; access without authorization; exceeding authorization; penalties.

TITLE 3
ARTICLE 4
CRIMES AGAINST THE PERSON

3-401 Compounding a criminal offense, defined; penalty.
3-402 Homicide; terms defined.
3-403 Murder in the first degree; penalty.
3-404 Murder in the second degree; penalty.
3-405 Manslaughter; penalty.
3-406 Motor vehicle homicide; penalty.
3-407 Assisting suicide, defined; penalty.
3-408 Assault in the first degree; penalty.
3-409 Assault in the second degree; penalty.
3-409.5 Simple assault; penalty.
3-410 Terroristic threats; penalty.
3-411 Restrain, abduct; defined.
3-412 Kidnapping; penalty.
3-413 False imprisonment in the first degree; penalty.
3-414 False imprisonment in the second degree; penalty.
3-415 Violation of custody; penalties.
3-416 Sexual assault; legislative intent.
3-417 Sexual assault; terms defined.
3-418 Sexual assault; first degree; penalty.
3-419 Sexual assault; second degree; penalty.
3-420 Sexual assault; in camera hearing.
3-421 Sexual assault; evidence of past sexual behavior; when admissible; procedure.
3-422 Sexual assault; evidence against another person; when admissible.
3-423 Confined person; offenses against another person; penalty; sentence.
3-424 Robbery; penalty.

TITLE 3
ARTICLE 5
INCHOATE CRIMES

3-501 Criminal attempt; conduct; penalty.
3-502 Conspiracy, defined; penalty.
3-503 Conspiracy; renunciation of criminal intent.
3-504 Accessory to crime; defined; penalty.
3-505 Aiding consummation of crime; penalty.
3-506 Prosecuting for aiding and abetting.

TITLE 3
ARTICLE 6
CRIMES AGAINST PUBLIC JUSTICE

3-601 Obstructing government operations; penalty.
3-602 Failure to report injury of violence; physician or surgeon; emergency room or first aid station attendants; penalty.
3-603 Refusing to aid a peace officer; penalty.
3-604 Resisting arrest; penalty; affirmative defense.
3-605 Consumption of liquor on public property, public roads, streets, alleys, forbidden; penalty.
3-606 Obstructing a peace officer; penalty.
3-607 False reporting; penalty.
3-608 Interfering with a fireman on official duty; penalty; fireman, defined.
3-609 Abuse of public record; penalty; public record, defined.
3-610 Escape; official detention, defined; knowingly permitting escape; penalty; defense to prosecution.
3-611 Providing contraband; penalty.
3-612 Loitering about jail; penalty.
3-613 Assault on an officer in the first degree; penalty.
3-614 Assault on an officer in the second degree; penalty.
3-615 Repealed.
3-616 Perjury; subornation of perjury; penalty.
3-617 Juror, testimony and official proceedings; defined.
3-618 Bribery; penalty.
3-619 Bribery of a witness; penalty; witness receiving bribe; penalty.
3-620 Bribery of a juror; penalty; juror receiving bribe; penalty.
3-621 Tampering with witnesses, informants, or jurors; penalty.
3-622 Jury tampering; penalty.
3-623 Tampering with physical evidence; penalty; physical evidence, defined.
3-624 Simulating legal process; penalty.
3-625 Employee; penalized due to jury service; prohibited; penalty.
3-626 Impersonating a peace officer.
3-627 Impersonating a public servant.
3-628 Official misconduct; penalty.
3-629 Oppression under color of office; penalty.
3-630 Misusing public money.
3-631 Improper influence in official matters.
3-632 Retaliation for past official action.
3-633 Improper gifts to public servants.
3-634 Special influence.
3-635 Doing business without a license.
3-636 Tampering with public property.
3-637 Injuring public property.
3-638 Bail jumping.
3-639 Failure to obey a lawful order of the Court.
3-640 Repealed.
3-641 Neglecting to serve a warrant; penalty; forfeiture of office.
3-642 Mutilating a flag; penalty; flag, defined.
3-643 Illegal solicitation.
3-644 Repealed.
3-645 Failure to appear; penalty.
3-646 Sell or exchange of property for promise to vote prohibited.

WINNEBAGO TRIBAL CODE
TABLE OF CONTENTS

TITLE 3
ARTICLE 7
CRIMES AGAINST PUBLIC HEALTH, SAFETY AND WELFARE
(As revised May 21, 2014)

3-701 Bigamy; penalty; exception.
3-702 Incestuous marriages; declared void.
3-703 Incest; penalty.
3-704 Child abuse; penalty.
3-705 [REPEALED]
3-706 [REPEALED]
3-706.1 [REPEALED]
3-707 [REPEALED]
3-708 [REPEALED]
3-708 Violations; penalty.
3-709 Privileged communication; patient and physician; husband and wife; not ground for excluding evidence.
3-710 Abandonment of spouse, child or dependent stepchild; child, defined.
3-711 Criminal nonsupport; penalty; exception.
3-712 Protective custody; penalty.
3-713 Failure to send child to school; truancy; penalties.
3-714 Curfew; penalty.
3-715 Contributing to the delinquency of a child; definitions; procuring alcohol for a minor; penalty.
3-716 Minor in possession; penalty.
3-717 Tobacco; minor in possession; sale to minors; smoking in tribal building prohibited; penalties; exemption.
3-718 Trafficking in children; penalty.
3-719 Welfare offense; penalty.
3-720 Desecration; penalty.
3-721 Disrupting a public or religious assembly.
3-722 Violation of privacy; penalty.
3-723 Criminal defamation; penalty.
3-724 Harassment; penalty.
3-725 Disorderly conduct; penalty.
3-726 Prostitution; penalty; citation in lieu of arrest.
3-727 Pandering; penalty.
3-728 Pandering; evidence.
3-729 Keeping a place of prostitution; penalty.
3-730 Prostitution cases; incrimination testimony; how treated.
3-731 Debauching a minor; penalty.
3-732 Public indecency; penalty.
3-733 Obscenity; penalty.
3-734 Rioting; penalty.
3-735 Failure to disperse; penalty.
3-736 Deadly weapon, knife, firearms, other terms; defined.
3-737 Weapons offense; penalty.
3-738 Aggravated weapons offense; penalty.
3-739 Using firearms to commit a crime; penalty.
3-740 Dangerous devices; penalty.
3-741 Fireworks offense; penalty.
3-742 Inhaling or drinking certain compounds; penalty.
3-743 Selling and offering for sale certain compounds; use; knowledge of seller; unlawful.
3-744 Act, exceptions.
3-745 [Reserved.]
3-746 Abandoning, or concealing a dead human body; penalty.
3-747 Concealing the death of another person; penalty.
3-748 Intimidation by phone call; penalty; prima facie evidence.
3-749 Interfering with a public service company; penalty.
3-750 Maintaining a nuisance; penalty; abatement or removal.
3-751 Disturbing the peace; penalty.
3-752 Telecommunications violations; penalty.
3-753 Animal, cruel mistreatment, cruel neglect, and abandon; defined.
3-754 Cruelty to animals; penalty; authorized or permitted conduct.
3-755 Livestock offense; penalty.
3-756 Waters offense; penalty.
3-757 Assault of a Human Embryo or Fetus; terms defined; limitations.
3-758 Assault of a Human Embryo or Fetus in the first degree; penalty.

TITLE 3
ARTICLE 7
CRIMES AGAINST PUBLIC HEALTH, SAFETY AND WELFARE
(continued)

3-759 Assault of a Human Embryo or Fetus in the second degree; penalty
3-760 Assault of a Human Embryo or Fetus in the third degree; penalty.
3-761 Indecent liberties; penalty.
3-762 Video Recording and Distribution of Criminal Assaults

TITLE 3
ARTICLE 8
CONTROLLED SUBSTANCES ACT
(As revised October 16, 2013)

3-801 Definitions.
3-802 Prohibition of sales, transport, import, export or possession of drug paraphernalia or drug manufacturing equipment.
3-803 Narcotics revolving fund.
3-804 Future controlled substances included.
3-805 Nomenclature in schedules.
3-806 Schedule I characteristics.
3-807 Schedule II characteristics.
3-808 Schedule III characteristics.
3-809 Schedule IV characteristics.
3-810 Schedule V characteristics.
3-811 Schedule I.
3-812 Schedule II.
3-813 Schedule III.
3-814 Schedule IV.
3-815 Schedule V.
3-816 Seizure without warrant; forfeitures; disposition; evidence; court costs and expenses.
3-817 School property; distribution; dispensing or possession.
3-818 Prohibited acts; penalties.
3-819 Prohibited acts; fraud, deceit.
3-820 Certain substances causing intoxication; exemptions; penalties.
3-821 Endeavor and conspiracy.
3-822 General penalty clause.
3-823 Additional penalties.
3-824 Severability.
3-825 Possession of a dangerous drug; penalty
3-826 Dangerous drug offense; penalty

TITLE 3
ARTICLE 9

[Reserved]

TITLE 3
ARTICLE 10

[Reserved]

TITLE 3
ARTICLE 11

[Reserved]

TITLE 3
ARTICLE 12
ADULT AND ELDERLY PROTECTIVE SERVICES ACT

3-1200 Citation.
3-1201 Legislative intent.
3-1202 Definitions.
3-1203 Duty of healthcare providers to report abuse.
3-1204 Duty of law enforcement to investigate.
3-1205 Immunity from liability.
3-1206 No access to records.
3-1207 Evidence exclusions void.
3-1208 No abuse solely for reliance upon spiritual healing.
3-1209 Willful failure to report.
3-1210 Willful release of confidential information.
3-1211 Abuse of a vulnerable or elderly adult.
3-1212 Ex parte order authorized.
3-1213 Subpoena of Medical and Financial Records.
3-1214 Procedures for prosecution.
3-1215 Conditions of Release.
3-1216 Elder Protection Order and Time Limits.
3-1217 Violation of Protection Orders.
3-1218 Severability.

TITLE 3
ARTICLE 13
[REPEALED]

TITLE 3
ARTICLE 14
WINNEBAGO TRIBAL POLICE FORCE

3-1400 Establishment of a force of police officers.
3-1401 Definitions.
3-1402 Standards.
3-1403 Training standards.
3-1404 Training.
3-1405 No exemptions.
3-1406 Status of Tribal peace officers.
3-1407 Weapons.
3-1408 Supplementary capacity.
3-1409 Supervision of Tribal peace officers.

TITLE 3
ARTICLE 15
CRIMINAL TRAFFIC OFFENSES
(As adopted September 24, 2003)

3-1500 Driving under influence of alcoholic liquor or drug; penalties; revocation of operator's license; applicable to violation of statutes or ordinances; probation; alcohol assessment; court; powers.
3-1501 Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; when test administered; refusal; penalty.
3-1502 Driving under influence of alcoholic liquor or drugs; test; additional test; refusal to permit; effect; results of test; available upon request.
3-1503 Driving under influence of alcoholic liquor or drugs; chemical test; consent of person incapable of refusal not withdrawn.
3-1504 Driving under influence of alcoholic liquor or drugs; chemical test; violation of statute or ordinance; results; competent evidence; permit; fee.
3-1505 Driving under influence of alcohol; operator's license; confiscation and revocation; procedures; appeal.
3-1506 Driving under influence of alcohol; revocation of impounded operator's license; procedure; reinstatement; fee; eligibility for employment driving permit and ignition interlock device.
3-1507 Operator's license revocation decision; notice; contents.
3-1508 License revocation; appeal.
3-1509 Blood sample; results of chemical test; admissible in criminal prosecution; disclosure required.
3-1510 Person under twenty-one years of age; prohibited acts; enforcement.
3-1511 Implied consent to submit to chemical test; when test administered; refusal; penalty.
3-1512 Impounded operator's license; sealing of record; when; operation of motor vehicle authorized.
3-1513 Ignition interlock device; court order authorized; issuance of restricted Class O license; prohibited act; violation; penalty.
3-1514 Careless driving, defined; penalty.
3-1515 Reckless driving, defined; penalty.
3-1516 Willful reckless driving, defined.
3-1517 Willful reckless driving; first offense; penalty.
3-1518 Reckless driving or willful reckless driving; second offense; penalty.
3-1519 Reckless driving or willful reckless driving; third and subsequent offenses; penalty.

WINNEBAGO TRIBAL CODE
TABLE OF CONTENTS

TITLE 4
JUVENILE PROCEDURE
(As redesignated July 1, 1989)

ARTICLE 1
GENERAL PROVISIONS

4-100 Citation.
4-101 Purpose.
4-102 Definitions.
4-103 Place of sitting.
4-104 Juvenile Court established.
4-105 Jurisdiction.
4-106 Court authority.
4-107 Indian child welfare transfers from Tribal Courts.
4-108 Child welfare transfers to tribal or state courts.
4-109 Court support staff.
4-110 Notice of legal rights.
4-111 Basic rights.
4-112 Warrants and custody orders.
4-113 Full faith and credit.
4-114 Admissibility of evidence in other proceedings.
4-115 Expungement.
4-116 Contempt of court.
4-117 Medical examination.
4-118 Fingerprints.
4-119 Rules of procedure.
4-120 Expenditure of funds.
4-121 Procedure.
4-122 Prosecution; criminal charge or Juvenile Court petition; determination; considerations.
4-123 Juvenile charged in court other than Juvenile Court; transfer to Juvenile Court; procedure.
4-124 Pre-transfer report.
4-125 Orders for support.
4-126 Prosecutor's duties.
4-127 Inspection of court records.
4-128 Law enforcement records.
4-129 Child and family services.
4-130 Identity confidential.
4-131 Exclusion of certain statement by alleged delinquent.
4-132 Voluntary foster care authorized.
4-133 Required Findings by a Court for Removal.
4-134 Reasonable Efforts.
4-135 Winnebago Kinship System.

TITLE 4
ARTICLE 2
EMERGENCY CUSTODY

4-201 Taking a minor into custody.
4-202 Notification of parents.
4-203 Notification of Court officers.
4-204 Release of detained child.
4-205 Special release rule for major offenses.
4-206 Court ordered release.
4-207 Extension of detention period.
4-208 Detention and shelter.
4-209 Emergency shelter in child's home.
4-210 Court ordered medical treatment.
4-211 Court ordered commitment for observation.
4-212 Search warrants for the protection of children.
4-213 Preliminary inquiry: criteria for detention or shelter care.
4-214 Place of detention or shelter care.
4-215 Standards for shelter care and detention facilities.

TITLE 4
ARTICLE 3
ADJUDICATION

4-301 Court intake.
4-302 Prosecutor's (presenting officer's) intake.
4-303 Diversion by contract.
4-304 Diversion contract inadmissible.
4-305 Diversion by consent decree.
4-306 Limitations on diversions.
4-307 Guardian ad litem appointments.
4-308 Guardian ad litem duties.
4-309 Adjudicatory hearing.
4-310 Mentally ill and developmentally disabled children.
4-311 Consent decree.
4-312 Dismissal of petition.
4-313 Sustaining petition
4-314 Temporary orders.

TITLE 4
ARTICLE 4
DISPOSITION

4-401 Pre-dispositional report.
4-402 Treatment plan.
4-403 Dispositional hearing.
4-404 Hearing purpose.
4-405 Hearing informal.
4-406 Medical examination.
4-407 Continuance.
4-408 Order of protection.
4-409 Placement preferences.
4-410 Neglected or dependent child or in-need-of-care; disposition.
4-411 Child-in-need-of-supervision; disposition.
4-412 Delinquent child; disposition.
4-413 Legal custody; guardianship.
4-414 Probation for delinquents and children in need of supervision.
4-415 Violation of probation.
4-416 New hearing authorized.
4-417 Continuing jurisdiction.
4-418 Permanency Hearings.
4-419 Guardianships as Recommended by the Department for permanence.

TITLE 4
ARTICLE 5
CHILD ABUSE

4-501 Legislative purpose.
4-502 Definitions.
4-503 Persons required to report child abuse or neglect.
4-504 Required report of postmortem investigation.
4-505 Evidence of abuse.
4-506 Temporary protective custody.
4-507 Reporting procedures.
4-508 Action upon receipt of report.
4-509 Child protection teams.
4-510 Immunity from liability.
4-511 Child abuse and child neglect diversion program.
4-512 Evidence not privileged.
4-513 Court proceedings; guardian ad litem.
4-514 Central registry.
4-515 Confidentiality of records.

TITLE 4
ARTICLE 6
TERMINATION OF PARENTAL RIGHTS

4-601 Motion for termination of parental rights.
4-602 Appointment of counsel.
4-603 No jury trial.
4-604 Abandonment.
4-605 Criteria for termination.
4-606 Standard of proof.
4-607 Voluntary termination of parental rights.
4-608 Interpreter for relinquishment of parental rights and consent to adoption.
4-609 Review of child's disposition following termination of the parent-child legal relationship.
4-610 Expert testimony.
4-611 Effect of decree.
4-612 Appeals.
4-613 Traditional custodians' and grandparents' rights.

TITLE 4
ARTICLE 7
ADOPTIONS

4-701 Jurisdiction over adoptions.
4-702 Purpose of adoptions.
4-703 Types of adoptions.
4-704 In-camera determination of enrollment eligibility.
4-705 Eligibility for statutory adoption.
4-706 Eligibility to adopt by statutory process.
4-707 Consent to statutory adoption.
4-708 Voluntary relinquishment.
4-709 When consent of parents unnecessary.
4-710 Notice of hearing for adoption without consent.
4-711 Consent of child.
4-712 Petition.
4-713 Investigation.
4-714 Adoption hearing.
4-715 Report and final decree of adoption.
4-716 Contents of adoption order.
4-717 Effect of final decree of statutory adoption.
4-718 Records and hearings confidential.
4-719 Certificates of adoption.
4-720 Foreign decree.
4-721 Adoption of adults.
4-722 Appeals.
4-723 Customary Adoptions.

TITLE 4
ARTICLE 8
DEVELOPING FOSTER CARE HOMES

4-801 Responsibility.
4-802 Licensing foster family homes.
4-803 Basic standard for foster families.
4-804 Basic requirements of foster families.
4-805 Funding for foster children's needs.
4-806 Physical facilities.
4-807 Family composition.
4-808 Personal characteristics.
4-809 Foster parenting abilities.

TITLE 4
ARTICLE 9
INCOME WITHHOLDING FOR CHILD SUPPORT ACT
(Repealed 2008) [TCR 08-79]

TITLE 4
ARTICLE 10
RULES OF JUVENILE PROCEDURE

Rule 1 Scope.
Rule 2 Purpose and construction.
Rule 3 Attorney or advocate of record.
Rule 4 Notice.
Rule 5 Service of summons.
Rule 6 Summons form.
Rule 7 When summons unnecessary.
Rule 8 Additional parties to be summoned.
Rule 9 Failure to appear.
Rule 10 Petition contents.
Rule 11 Petition form.
Rule 12 Adoption petition.
Rule 13 Juvenile offender commencement of action petition.
Rule 14 Responsive pleadings and motions.
Rule 15 Parties.
Rule 16 Discovery.
Rule 17 Pre-trial conference.
Rule 18 Emergency orders.
Rule 19 Hearings.
Rule 20 Adoption hearing.
Rule 21 Dependency and neglect and child-in-need-of–care dispositional hearing.
Rule 22 Jury Trial.
Rule 23 Termination of parental rights hearing.
Rule 24 Record of proceedings.
Rule 25 Motions for a new trial or rehearing.
Rule 26 Motions for arrest or modification of judgment.
Rule 27 Shelter and detention.
Rule 28 Disqualification or disability of judge.
Rule 29 Evidence.
Rule 30 Clerical mistakes.
Rule 31 Explanation of rights at first appearance (juvenile offenders); child-in-need-of supervision.
Rule 32 Insanity at time of commission of juvenile offense.
Rule 33 Determination of competency or capacity to stand trial.
Rule 34 Fingerprinting or photographing of minor.
Rule 35 Mental or physical examination.
Rule 36 Probation revocation hearing.
Rule 37 Dispositional hearing.
Rule 38 Appeals.
Rule 39 Stay pending appeal

TITLE 4
ARTICLE 11
GRANDPARENT RIGHTS
(As adopted August 28, 2015)

4-1101 Purpose.
4-1102 Application.
4-1103 Scope.
4-1104 Grandparent Notification.
4-1105 Grandparent Input.
4-1106 Grandparent Visitation.
4-1107 Change of Grandchild’s Domicile; Notice to Grandparent.
4-1108 Emergency Medical Care and Grandparent Medical Consent.
4-1109 Grandparent Medical Consent Authorization Affidavit.

WINNEBAGO TRIBAL CODE
TABLE OF CONTENTS

TITLE 5
TRIBAL GOVERNMENT

ARTICLE 1
ENROLLMENT
(As amended and restated August 22, 2012)

5-100 Definitions.
5-101 Tribal Enrollment Committee.
5-102 Determination of membership, enrollment.
5-103 Application for membership by member of another tribe.
5-104 Enrollment application; who must submit.
5-105 Filing of enrollment application.
5-106 Enrollment application for minor, incompetent person, some United States Armed Forces members.
5-107 Enrollment application; information and supporting documentation requirements; burden of proof.
5-108 Actions required of the Enrollment Staff.
5-109 Actions required of the TEC.
5-110 Actions required of the Tribal Council.
5-111 Applicants determined ineligible by the TEC.
5-112 Rejection of application by the Tribal Council; membership appeals.
5-113 Distribution of trust assets or other Financial Benefits; appeals.
5-114 Individual folders; contents of individual folder.
5-115 Access to records.
5-116 Updating records.
5-117 Determination of blood quantum.
5-118 Blood quantum corrections; administrative actions; persons found to be ineligible.
5-119 Enrollment of persons without an enrolled parent.
5-120 Relinquishment of an adult.
5-121 Prohibition on relinquishment of a minor.
5-122 False information; fraudulent acts; otherwise ineligible.
5-123 Disenrollment.
5-124 Amendment procedures.
5-125 Tribal Member Identification; Certification of Blood Quantum
5-126 Use of Fingerprint Reader.
5-127 Claiming financial or other benefits on behalf of another tribal member.
5-128 Indian Child Welfare Act (“ICWA”) cases.
5-129 Notices issued to last known address.

TITLE 5
ARTICLE 2
ELECTIONS
(As revised July 22, 2015)

5-201 Eligible voters.
5-202 Election board.
5-203 Notice of election.
5-204 Qualification of candidates.
5-205 Ballots.
5-206 Absentee ballots.
5-207 Conduct of elections.
5-208 Polling place.
5-209 Conduct of election officials.
5-210 Stickers.
5-211 Campaigning.
5-212 Alcohol.
5-213 Loitering.
5-214 Election tampering.
5-215 Alternates or substitution.
5-216 Placement on Primary Election Ballot.
5-217 Absentee Ballots for Primary Election.
5-218 Primary Election.
5-219 Absentee ballots for Regular Election.
5-220 Regular Election.
5-221 Term of office.
5-222 Runoff election.
5-223 Certification and Oath of Office.

TITLE 5
ARTICLE 3

[Reserved]

TITLE 5
ARTICLE 4
TRIBAL ELECTION PROCEDURES

5-400 Definitions.
5-401 Repealed.
5-402 Filing.
5-403 Fees.
5-404 Petition in lieu of fees.

WINNEBAGO TRIBAL CODE
TABLE OF CONTENTS

TITLE 6
CIVIL TRAFFIC CODE
(As amended August 27, 2003)

ARTICLE 1
GENERAL PROVISIONS

6-101 Purpose.
6-102 Construction of Rules.
6-103 References to the law of the State of Nebraska incorporated.
6-104 Inappropriate references to be given a common sense meaning.
6-105 Severability.
6-106 Violations; civil violation.
6-107 Peace officers; duty to enforce rules and laws; powers.
6-108 Civil penalties.

TITLE 6
ARTICLE 2
PROCEDURES

6-201 Enforcement; citation; complaint; contents; procedure.
6-202 Civil penalty and costs; failure to pay; judgment; installments.
6-203 Person charged with traffic infraction; citation; conditions; penalty.

TITLE 6
ARTICLE 3
LICENSING, REGISTRATION AND VEHICLE REQUIREMENTS

6-301 Motor vehicle registration.
6-302 Operation of unregistered motor vehicle; penalty.
6-303 Motor vehicle title.
6-304 Violation of motor vehicle title requirements; penalty.
6-305 Operator's license.
6-306 Violation of operator's license requirements; penalty.

TITLE 6
ARTICLE 4
MOVING TRAFFIC

6-401 Obedience to traffic control devices; exceptions.
6-402 Traffic control signals; meaning; turns on red signal; when.
6-403 Pedestrian-control signals.
6-404 Flashing signals; exception.
6-405 Driving on right half of roadway required; exceptions.
6-406 Vehicles proceeding in opposite direction; passing.
6-407 Overtaking and passing rules; vehicles proceeding in same direction.
6-408 Overtaking and passing upon the right; when permitted.
6-409 Limitations on overtaking and passing on the left; precautions required; return to right side of highway.
6-410 Limitations on overtaking, passing, or driving to the left of the center of roadway; when prohibited.
6-411 No-passing zones; exception.
6-412 One-way roadways and rotary traffic islands; jurisdiction; exception for emergency vehicles.
6-413 Driving on roadways laned for traffic; rules; traffic control devices.
6-414 Following vehicles; restrictions.
6-415 Driving on divided highways; driving on median prohibited; exceptions.
6-416 Driving on highway shoulders prohibited; exceptions.
6-417 Controlled-access highway; entrances; exits.
6-418 Vehicles approaching or entering intersection at same time; right-of-way; entering a highway or roadway.
6-419 Vehicle turning left; yield right-of-way.
6-420 Preferential right-of-way; stop and yield signs.
6-421 Vehicle entering roadway from private road or driveway; yield right-of-way.
6-422 Moving a stopped, standing, or parked vehicle; yield right-of-way.
6-423 Operation of vehicles upon the approach of emergency vehicles.
6-424 Driving upon sidewalk; prohibited; exception.
6-425 Basic rule; speed.
6-426 Speed; maximum limits; signs.
6-427 Special speed limitations; motor vehicle towing a mobile home; school buses; motor-driven cycle.
6-428 Speed determination; use of speed measurement devices; requirements; apprehension of driver; when.
6-429 Minimum speed regulation; impeding traffic.
6-430 Charging violations of speed regulation; summons; burden of proof; elements of offense.
6-431 Racing on highways; violation; penalty.
6-432 Driving under influence of alcoholic liquor or drug; penalties.
6-433 Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; when test administered; refusal; penalty.
6-434 Driving under influence of alcoholic liquor or drugs; test; additional rest; refusal to permit; effect; results of test; available upon request.
6-435 Driving under influence of alcoholic liquor or drugs; chemical test; consent of person incapable of refusal not withdrawn.
6-436 Driving under influence of alcoholic liquor or drugs; chemical test; violation of statute or ordinance; results; competent evidence.
6-437 Blood sample; results of chemical test; admissible in civil proceeding; disclosure required.
6-438 Person under twenty-one years of age; prohibited acts; enforcement.
6-439 Implied consent to submit to chemical test; when test administered; refusal; penalty.
6-440 Careless driving, defined; penalty.
6-441 Reckless driving, defined; penalty.
6-442 Willful reckless driving, defined.
6-443 Willful reckless driving; penalty.

TITLE 6
ARTICLE 5
NON-MOVING TRAFFIC

6-501 Pedestrian obedience to traffic control devices and regulations.
6-502 Pedestrians' right-of-way in crosswalk; traffic control devices.
6-503 Crossing at other than crosswalks; yield right-of-way.
6-504 Pedestrians on highways and roadways; sidewalks and shoulders.
6-505 Pedestrians soliciting rides or business; prohibited acts.
6-506 Stopping, parking, or standing upon a roadway or bridge; limitations.
6-507 Persons authorized to remove vehicles; cost of removal; lien.
6-508 Stopping, standing, or parking prohibited; exceptions.
6-509 Parking regulations; signs; control by local authority.
6-510 Unattended motor vehicles; conditions.
6-511 Overloading front seat or obstructing driver; prohibited.
6-512 Opening and closing vehicle doors; restriction.
6-513 Traveling on a downgrade; gears; position.
6-514 Following fire apparatus in response to an alarm; prohibited.
6-515 Restrictions on driving over unprotected fire hose.

TITLE 6
ARTICLE 6
HIGHWAYS, ROADS AND BRIDGES

6-601 Removal of traffic hazards; determined by local authority; violation; penalty.
6-602 Depositing materials on roads or ditches; penalties.
6-603 Rubbish on highways or roads; prohibited; signs; enforcement; violation; penalties.
6-604 Camping; permitted; where; violation; penalty.
6-605 Hunting, trapping, or molesting predatory animal on or from roadway; prohibited, exception; violation; penalty.
6-606 Advertising signs, displays, or devices; permitted signs enumerated.

TITLE 6
ARTICLE 7
VEHICLE AND TRAFFIC SAFETY

6-701 Peace officers; investigation of traffic accident; duty to report; Department of Roads; powers; duties.
6-702 Motor vehicle; accident; duty to stop; information to furnish; report; violation; penalty.
6-703 Accident; operator's duty; penalty.
6-704 Accidents; reports required of operators and owners; when; supplemental reports; reports of peace officers open to public inspection; limitation on use as evidence; violation; penalty.
6-705 Accidents; reports required of garages and repair shops.
6-706 Accidents; coroner; report to Nebraska Department of Roads.
6-707 Accident; death; driver; pedestrian sixteen years or older; coroner; examine body; amount of alcohol or drugs; report to Department of Roads; public information.
6-708 Accident; driver or pedestrian sixteen years of age or older; person killed; submit to chemical test; results in writing to Director-State Engineer; public information.
6-709 Accidents; body fluid; samples; test; report.
6-710 Roadway; removal of dead or injured persons; peace officer.
6-711 Roadways, travel on; regulation by local authorities; when authorized; signs.
6-712 Display of unauthorized signs, signals, or markings; public nuisance; removal.
6-713 Advertising devices adjacent to highway; when prohibited; public nuisance; removal.
6-714 Required obedience to traffic laws; private property used for public road by consent of owner; provisions uniform throughout the Reservation.
6-715 Drivers to exercise due care with pedestrian; audible signal.
6-716 Obedience to peace officers; violation; penalty.
6-717 Failing to observe a blind person; penalty.
6-718 Persons riding animals or driving animal drawn vehicles; farm implements; duties.
6-719 Interference with official traffic control devices or railroad signs or signals;
6-720 Signs, markers, devices, or notices; prohibited acts; penalty.
6-721 Motor vehicle; motorcycle; lights; requirements; prohibited acts.
6-722 Lights; vehicle being driven.
6-723 Headlights; construction; adjustment; requirements.
6-724 Violations; penalty.
6-725 Acetylene headlights; number; construction; requirements.
6-726 Headlights; glare; duty of operator; penalty.
6-727 Spotlights; auxiliary driving lights; signal lights; other devices; intensity and direction.
6-728 Parking lights; unlawful use.
6-729 Vehicle proceeding in forward motion; backup lights on; prohibited; violation; penalty.
6-730 Lights, red or green, in front of vehicle prohibited; exceptions.
6-731 Lights; rotating or flashing; colored lights; when permitted.
6-732 Flashing or rotating lights; emergency vehicles; colors permitted.
6-733 Rotating or flashing amber light; when permitted.
6-734 Rotating or flashing red light or red and blue lights; when permitted; application; permit; expiration.
6-735 Rotating or flashing lights; violation; penalty.
6-736 Clearance lights; requirements; substitution; violations; penalty.
6-737 Vehicles required to have clearance lights; flares; reflectors; when required as equipment.
6-738 Vehicles required to have clearance lights; flares; reflectors; how and when displayed.
6-739 Vehicles; red flags; red emergency reflectors; when required as equipment; how and when displayed.

TITLE 6
ARTICLE 7
VEHICLE AND TRAFFIC SAFETY
(continued)

6-740 Clearance lights, flares, and reflector requirements; violations; penalty.
6-741 Removing flares or flags; penalty.
6-742 Vehicles; slow moving; emblem required; when used.
6-743 Vehicles; slow moving; emblem; how equipped; penalty.
6-744 Load projecting to rear; red flag or red light required.
6-745 Motor vehicles; brakes; requirements.
6-746 Trailers; brake requirements; safety chains; when required.
6-747 Trucks and buses; brake requirements; violation; penalty.
6-748 Hydraulic brake fluids; requirements; violation; penalty.
6-749 Tires; requirements; cleats or projections prohibited; exceptions; permissive uses; special permits; exceptions.
6-750 Trucks; rearview mirror.
6-751 Operator; view to rear required; outside mirrors authorized.
6-752 Windshield and windows; nontransparent material prohibited; windshield equipment; requirements.
6-753 Safety glass, defined.
6-754 Safety glass; requirements; vehicles built after January 1, 1935; motorcycle windshield; requirements; violation; penalty.
6-755 Violation by common carrier; permit revoked or suspended.
6-756 Occupant protection systems.
6-757 Occupant protection system; 1973 year model and later motor vehicles; requirements; violation; penalty.
6-758 Child passenger; use restraint system or occupant protection system; when; information and education program.6-759 Child passenger restraint requirements; violations; penalty; defense.
6-760 Violation of child passenger restraint requirements; how construed.
6-761 Occupant protection system; use required; when; exceptions.
6-762 Enforcement of occupant protection system requirements; when.
6-763 Occupant protection system; violation; penalty.
6-764 Occupant protection system violation; evidence; when admissible.
6-765 Limitations on backing vehicles.
6-766 Obedience to signal indicating approach of train; prohibited acts.
6-767 Buses and school buses required to stop at all railroad grade crossings; exceptions.
6-768 Grade crossings; certain carriers; required to stop; exceptions.
6-769 School bus; safety requirements; use of stop signal arm; use of warning signal lights; violations; penalty.
6-770 Splash aprons; requirements; violation; penalty.
6-771 Towing; drawbars or other connections; length; red flag required, when.
6-772 Horn; requirements; prohibited acts.
6-773 Muffler or noise-suppressing system; prevention of fumes and smoke; requirements.
6-774 Television set; equipping motor vehicle with screen visible to driver; penalty.

TITLE 6
ARTICLE 8
MISCELLANEOUS

6-801 Motor vehicle owner or operator; liability to guest passenger; limitation.
6-802 Leased trucks, truck-tractors, and trailers; liability of owner for damages.
6-803 Operating a motor vehicle or a vessel to avoid arrest; penalty.
6-804 Winnebago Traffic Code; applicability to persons operating motorcycles.
6-805 Restrictions on operating motorcycles.
6-806 Operating motorcycles on roadways laned for traffic; prohibited acts.
6-807 Moped; operation; license or permit; required.
6-808 Moped; operator; Winnebago Traffic Code; applicable.
6-809 Moped; restrictions on operation.
6-810 Operating mopeds on roadways laned for traffic; prohibited acts.
6-811 Winnebago Traffic Code; applicability to persons operating bicycles.
6-812 Riding of bicycles; prohibited acts.
6-813 Bicycles on roadways and bicycle paths; general rules; regulation by local authority.
6-814 Equipment on bicycles; lights; brakes.
6-815 Bicycles; reflective device or material; retail sale; requirements; violation; penalty.
6-816 All-terrain vehicle, defined.
6-817 All-terrain vehicle; operation.
6-818 All-terrain vehicle; lights required; when.
6-819 All-terrain vehicle; equipment required.
6-820 Modification of all-terrain vehicle; prohibited.
6-821 All-terrain vehicle; competitive events; exemptions.
6-822 All-terrain vehicle; accident; report required.
6-823 Snowmobiles; registration required.
6-824 Snowmobile operation; equipment; permission of landowner.
6-825 Snowmobile contests; requirements.
6-826 Snowmobiles; prohibited acts.
6-827 Snowmobile; operation; muffler, when required.
6-828 Operation by person under twelve years of age; operation by a person under sixteen; restrictions; snowmobile safety certificate.
6-829 Snowmobile owner; prohibited acts.
6-830 Snowmobiles; carrying firearms; hunting; unlawful.
6-831 Snowmobile; confiscation; sale; proceeds; disposition.
6-832 Snowmobile operation; accident; requirements.
6-833 Legislative intent.
6-834 Minibikes; operation; violations; penalty; unlawful acts.
6-835 Radar transmission device; definitions.
6-836 Radar transmission device; operation; possession; unlawful; violation; penalty.
6-837 Authorized devices.
6-838 Prohibited device; seizure; disposal.
6-839 Abandoned motor vehicle, defined.
6-840 Abandoned motor vehicle; title; vest in local authority; when.

WINNEBAGO TRIBAL CODE
TABLE OF CONTENTS

TITLE 7
HEALTH, SAFETY, AND WELFARE

ARTICLE 1
MENTAL HEALTH COMMITMENT ACT
(As revised October 16, 2013)

7-101 Definitions.
7-102 Petition.
7-103 Counsel.
7-104 Hearing On The Petition.
7-105 Disposition.
7-106 Emergency Protective Custody.

TITLE 7
ARTICLE 3
ANIMALS
(Revised March 9, 2011)

7-300 Definitions.
7-301 Offices designated.
7-302 Licensing of dogs and cats.
7-303 Breeder of Kennel permits.
7-304 Rabies certification of vaccination required.
7-305 Fee waiver.
7-306 Display of tag.
7-307 Transfer or change of ownership.
7-308 Duplicate tag.
7-309 Removal of license tags.
7-310 At large prohibited.
7-311 Spay and Neuter.
7-312 Impoundment and ticketing.
7-313 Disposition of animals.
7-314 General prohibitions and duties.
7-315 Animal care; animal cruelty.
7-316 Release or adoption of animals.
7-317 Release of unsterilized animals.
7-318 Number of animals.
7-319 Non-indigenous birds.
7-320 Impoundment fees.
7-321 Redemption.
7-322 Injured animals at large.
7-323 Confinement of animals.
7-324 Dog pens.
7-325 Conditions of pens and premises.
7-326 Animal bites.
7-327 Nuisance animals.
7-328 Dangerous animals.
7-329 Determination of vicious animal, dangerous animal, potentially dangerous animal; notice to owner.
7-330 Vicious dogs.
7-331 Appeal procedure.
7-332 Requirements for dangerous animals; penalties.
7-333 Animal fighting or attack training; penalty.
7-334 Keeping of innately wild animals.
7-335 Wildlife protection.
7-336 Keeping of exotic animals.
7-337 Keeping of livestock.
7-338 Keeping of animals for which no licensed, approved rabies vaccine is available.
7-339 Kennel standards.
7-340 Harboring of strays.
7-341 Trapping animals.
7-342 Rabies reports; examination; quarantine.
7-343 Civil liability of owner for damages caused by the owner’s dog, cat or other domesticated animal.
7-344 Sovereign immunity of the Tribe.
7-345 Penalties.

TITLE 7
ARTICLE 4
OPEN BURNING

7-401 Definitions.
7-402 Open burning.
7-403 Prohibition on open burning.
7-404 Trash containers.
7-405 Penalty.

TITLE 7
ARTICLE 5
BURNING OF PETROLEUM PRODUCTS

7-501 Definitions.
7-502 Burning of petroleum products.
7-503 Penalty.

TITLE 7
ARTICLE 6
OPEN DUMPING

7-601 Definitions.
7-602 Open dumping.
7-603 Containment Dumping.
7-604 Penalty.

TITLE 7
ARTICLE 8
COMPULSORY EDUCATION

7-801 Compulsory education; attendance required.
7-802 Compulsory education; exceptions.
7-803 Record of attendance; made where.
7-804 Non-attendance lists; transmission of information.
7-805 Entry or withdrawal of student; attendance reports.
7-806 Non-attendance; duty to report; investigation.
7-807 Excessive absenteeism; report.
7-808 Diversion team; process.
7-809 Failure to comply with diversion process; continued violation; further action.
7-810 School procedures.
7-811 Effective date.

TITLE 7
ARTICLE 9
FOOD CODE

7-901 Food Code.
7-902 Food safety, illness prevention and honest presentation.
7-903 Statement.
7-904 Statement of application and listing of terms.
7-905 Person in Charge.
7-906 Clean Condition.
7-907 Cleaning Procedure.
7-908 When to Wash.
7-909 Clean Condition.
7-910 Eating, Drinking, or Using Tobacco.
7-911 Discharge from the Eyes, Nose or Mouth.
7-912 Food.
7-913 Characteristics.
7-914 Nonfood-Contact Surfaces.
7-915 Equipment and Utensils.
7-916 Food-Contact Surfaces.
7-917 Nonfood-Contact Surfaces.
7-918 Approved System.
7-919 Outdoor Enclosure.
7-920 Receptacles.
7-921 Outside Receptacles.
7-922 Storing Refuse, Recyclables, and Returnables.
7-923 Areas, Enclosures, and Receptacles, Good Repair.
7-924 Surface Characteristics.
7-925 Handwashing Cleanser, Availability.
7-926 Mechanical.
7-927 Maintaining Premises, Unnecessary Items and Litter.
7-928 Prohibiting Animals.
7-929 Separation of poisonous or toxic materials.
7-930 Poisonous or toxic materials; Restriction.
7-931 Conditions of Use.
7-932 Rodent Bait Stations.
7-933 Public Health Protection.
7-934 Preventing Health Hazards, Provisions for Conditions Not Addressed.
7-935 Modifications and Waivers.
7-936 Prerequisite for Operation.
7-937 Form of Submission.
7-938 Qualifications and Responsibilities of Applicants.
7-939 Contents of Application.
7-940 Existing Establishments, Permit Renewal, and Change of Ownership.
7-941 Denial of Application for Permit, Notice.
7-942 Revocation.
7-943 Appeal.
7-944 Responsibilities of Permit Holder.

TITLE 7
ARTICLE 10
CORONER

7-1000 Appointment of coroner; qualifications; vacancies.
7-1001 Investigations and inquests.
7-1002 Expenses.
7-1003 Witnesses; fees.
7-1004 Oath of witnesses.
7-1005 Testimony; filing.
7-1006 Witness bound over; return.
7-1007 Burial.
7-1008 Bodies; effects; custody.
7-1009 Certificates of death.
7-1010 Expenses.
7-1011 Fingerprinting of unidentified deceased person.
7-1012 Coroner removal of pituitary gland during autopsy.

WINNEBAGO TRIBAL CODE
TABLE OF CONTENTS

TITLE 7
ARTICLE 11
WINNEBAGO DRUG-FREE WORK PLACE
(Revised June 13, 2012)

7-1101 Citation.
7-1102 Purpose.
7-1103 Definitions.
7-1104 Statement of policy on drugs.
7-1105 Statement of policy on alcohol.
7-1106 Zero tolerance policy.
7-1107 Education and training of employees.
7-1108 Drug and alcohol testing procedures; reasonable suspicion.
7-1109 Random drug and alcohol testing.
7-1110 Drug test results.
7-1111 Alcohol test results.
7-1112 Refusal to submit.
7-1113 Positive test results.
7-1114 Release of test results.
7-1115 Laboratory facility.
7-1116 Applicants; generally.
7-1117 Prohibited acts; penalties.
7-1118 Supervisor responsibility.
7-1119 Consent to jurisdiction.

WINNEBAGO TRIBAL CODE
TABLE OF CONTENTS

TITLE 7
ARTICLE 12
WINNEBAGO WORKER'S COMPENSATION

7-1201 Purpose.
7-1202 Effective Date.
7-1203 Scope and Exclusive Remedy.
7-1204 Sovereign Immunity.
7-1205 Acknowledgment of Program and Notice to Covered Employees.
7-1206 Definitions.
7-1207 Notice of Injury to Employer & Filing of Claim with Administrator.
7-1208 Administrator.
7-1209 Time Limit for Filing of Claim.
7-1210 Medical Treatment of Covered Employee.
7-1211 Independent Medical Examination.
7-1212 Effect of Refusal or Obstruction of Examination or Treatment.
7-1213 Access to Medical Records and Medical Reports.
7-1214 Aggravation of Pre-existing Injury.
7-1215 Disclosure of Pre-existing Disabilities.
7-1216 False Statement or Representation in Employment Application.
7-1217 Benefits Mistakenly Awarded by Administrator.
7-1218 Benefits Mistakenly Awarded by the Worker's Compensation Appeals Committee.
7-1219 Benefits Induced by Proven Fraud.
7-1220 Right to Occupational Injury Benefits.
7-1221 Employer's Liability to Medical, Surgical and Hospital Services.
7-1222 Selection of Treating Physician by Administrator.
7-1223 Return to Work Form.
7-1224 Waiver by Covered Employee Invalid.
7-1225 Other Benefits Not Factors.
7-1226 Defenses to Liability Denied.
7-1227 Average Weekly Wage.
7-1228 Maximum and Minimum Weekly Benefits.
7-1229 Compensation; Schedule; Total Partial, and Temporary Disability; Injury to Specific Parts of the Body; Amounts and Duration of Payments.
7-1230 Exclusions from Coverage.
7-1231 Waiting Period for Benefits.
7-1232 Injuries Causing Death.
7-1233 Computation of Payments of Death Benefits.
7-1234 Death Benefit Compensation Schedule.
7-1235 Death of Covered Employee Ends Disability Payments.
7-1236 Burial Expenses.
7-1237 Waiting Time Penalty.
7-1238 Worker's Compensation Appeals Committee.
7-1239 Procedures for Disputed Claims.
7-1240 Hearing Request Procedures.
7-1241 Experts.
7-1242 Liability of Third Person to Injured Covered Employee; Subrogation Powers.
7-1243 Third Party Claim Procedures and Notice.
7-1244 Third Party Claims & Attorney Fees.
7-1245 Third Party Claims; Settlement Requirements.
7-1246 Awards.

WINNEBAGO TRIBAL CODE
TABLE OF CONTENTS

TITLE 7
ARTICLE 13
FLOOD DAMAGE PREVENTION CODE
(Revised November 4, 2011)

7-1301 Findings of Fact.
7-1302 Statement of purpose.
7-1303 Methods of reducing flood losses.
7-1304 Definitions.
7-1305 Land to which this Article applies.
7-1306 Basis for establishing the area of special flood hazard.
7-1307 Penalties for non-compliance.
7-1308 Abrogation of greater restrictions.
7-1309 Interpretation.
7-1310 Warning and disclaimer of liability.
7-1311 Establishment of development permits.
7-1312 Administration.
7-1313 Duties and responsibilities of the Administrator.
7-1314 Variance procedures.
7-1315 General standards for flood hazard reduction.
7-1316 Specific standards for flood hazard reduction.
7-1317 Before regulatory floodway.
7-1318 Floodways.
7-1319 Critical Facility.

TITLE 7
ARTICLE 14
WINNEBAGO POLLUTION CONTROL CODE

7-1400 Citation.
7-1401 Definitions.
7-1402 Pollution emissions and abatement.
7-1402.1 Abatement required.
7-1403 Exemption.
7-1404 Use of notification.
7-1405 Notification and approval of potential emission facility.
7-1406 Livestock feedlots.
7-1407 Cause of action for abandonment of hazardous waste on property of another.
7-1408 Livestock odor.
7-1409 Authority to issue penalty orders.
7-1410 Amount of penalty; considerations.
7-1411 Corrective order.
7-1412 Definitions.
7-1413 PCB: prohibited use.
7-1414 Definitions.
7-1415 Exemptions.
7-1416 Monitoring.
7-1417 Contents labeled.
7-1418 Environmental protection requirements.

TITLE 7
ARTICLE 15
LANDLORD TENANT RELATIONS

7-1501 Applicability.
7-1502 Definitions.
7-1503 Rental Agreement.
7-1504 Security Deposit.
7-1505 Eviction for Possession of a Controlled Substance.
7-1506 Utilities and Waste Disposal.
7-1507 Termination.
7-1508 Rights and Obligations of Landlord.
7-1509 The Rights and Obligations of Tenant.
7-1510 Landlord Remedies.
7-1511 Tenant Remedies.
7-1512 Notification.
7-1513 Winnebago Tribal Housing Committee.

WINNEBAGO TRIBAL CODE
TABLE OF CONTENTS

TITLE 7
ARTICLE 16
SEX OFFENDER REGISTRATION
(Adopted May 25, 2011)

7-1601 Citation.
7-1602 Purpose and Legislative Intent.
7-1603 Effective Date.
7-1604 Construction of rules.
7-1605 References to federal law incorporated.
7-1606 Creation of Sex Offender Registry.
7-1607 Creation of public Sex Offender Registry website.
7-1608 Cooperative Agreement with the State of Nebraska permitted.
7-1609 Definitions.
7-1610 Covered offenses.
7-1611 Tier 1 offenses; sex offenses.
7-1612 Tier 1 offenses; offenses involving minors.
7-1613 Tier 1 offenses; certain tribal offenses.
7-1614 Tier 1 offenses; certain federal offenses.
7-1615 Tier 1 offenses; certain military offenses.
7-1616 Tier 2 offenses; recidivism and felonies.
7-1617 Tier 2 offenses; offenses involving minors.
7-1618 Tier 2 offenses; certain tribal offenses.
7-1619 Tier 2 offenses; certain federal offenses.
7-1620 Tier 2 offenses; certain military offenses.
7-1621 Tier 3 offenses; recidivism and felonies.
7-1622 Tier 3 offenses; general offenses.
7-1623 Tier 3 offenses; certain tribal offenses.
7-1624 Tier 3 offenses; certain federal offenses.
7-1625 Tier 3 offenses; certain military offenses.
7-1626 Required information; general requirements.
7-1627 Criminal history.
7-1628 Date of Birth.
7-1629 DNA sample.
7-1630 Driver's licenses, identification cards, passports, and immigration documents.
7-1631 Employment information.
7-1632 Finger and palm prints.
7-1633 Internet identifiers.
7-1634 Name.
7-1635 Offense Information.
7-1636 Phone numbers.
7-1637 Picture.
7-1638 Physical description.
7-1639 Professional licensing information.
7-1640 Residence address.
7-1641 School.
7-1642 Social Security Number.
7-1643 Temporary lodging.
7-1644 Vehicle information.
7-1645 Frequency.
7-1646 Reduction of registration periods.
7-1647 Clean record.
7-1648 Requirements for in person appearances.
7-1649 Where registration is required; jurisdiction of conviction.
7-1650 Where registration is required; jurisdiction of incarceration.
7-1651 Where registration is required; jurisdiction of residence.
7-1652 Where registration is required; jurisdiction of employment.
7-1653 Where registration is required; jurisdiction of school attendance.
7-1654 Where registration is required; jurisdiction of where may be found.
7-1655 Timing of registration; timeframe.
7-1656 Timing of registration; duties of Chief of Police.
7-1657 Retroactive registration.
7-1658 Timing of recapture.
7-1659 Keeping registration current; jurisdiction of residency.
7-1660 Keeping registration current; jurisdiction of school attendance.
7-1661 Keeping registration current; jurisdiction of employment.
7-1662 Keeping registration current; duties of Chief of Police.
7-1663 Failure to appear for registration and absconding; failure to appear.
7-1664 Failure to appear for registration and absconding; absconded sex offenders.
7-1665 Failure to appear for registration and absconding; failure to register.
7-1666 Website.
7-1667 Dru Sjodin National Sex Offender Public Website.
7-1668 Required website information.
7-1669 Prohibited website information.
7-1670 Witness protection.
7-1671 Law enforcement notification.

TITLE 7
ARTICLE 16
SEX OFFENDER REGISTRATION
(Adopted May 25, 2011)
(continued)

7-1672 Community notification.
7-1673 No waiver of immunity.
7-1674 Good faith.
7-1675 Violation; criminal offense.
7-1676 Violation; civil penalty.
7-1677 Hindrance of sex offender registration; criminal offense.
7-1678 Hindrance of sex offender registration; civil penalty.

TITLE 7
ARTICLE 17
SEX OFFENDER RESTRICTIONS
(Adopted October 19, 2011)

7-1701 Purpose.
7-1702 Definitions.
7-1703 Residency restrictions; general.
7-1704 Residency restrictions; civil penalty.
7-1705 Residency restrictions; tribal property
7-1706 Measurement of distance.
7-1707 Renting to a sex offender.
7-1708 Exclusion zones.
7-1709 Exclusion zones; civil penalty.
7-1710 Effective date.

TITLE 7
ARTICLE 18
WHISTLE BLOWER PROTECTION
(Adopted October 5, 2015)

7-1801 Citation.
7-1802 Purpose.
7-1803 Scope.
7-1804 Authority.
7-1805 Definitions.
7-1806 Employee's Duty to Report.
7-1807 Reports of Criminal Activity.
7-1808 Reports of Mismanagement, Waste, Abuse, or Dangers to Public Health or Safety.
7-1809 Retaliation Prohibited.
7-1810 Reporting that is not Protected.
7-1811 False Claims.
7-1812 Cause of Action.
7-1813 Limited Waiver of Sovereign Immunity.
7-1814 Limited Remedies.
7-1815 Exclusive Jurisdiction and Sovereign Immunity.
7-1816 Effective Date.

TITLE 7
ARTICLE 19
SETTLING PARTICIPANT BRAND LISTING ACT
(Adopted December 22, 2015)

7-1901 Citation.
7-1902 Purpose.
7-1903 Scope.
7-1904 Retaliation Prohibited.
7-1905 Reporting that is not Protected.
7-1906 False Claims.

WINNEBAGO TRIBAL CODE
TABLE OF CONTENTS

TITLE 8
NATURAL RESOURCES
(Revised November 6, 2009)

ARTICLE 1
WILDLIFE AND PARKS
GENERAL PROVISIONS

8-101 Authority.
8-102 Policy.
8-103 Intent.
8-104 Effective Date.
8-105 Winnebago Wildlife and Parks Commission.
8-106 Name.

AGREEMENTS

8-107 Cooperative and reciprocal agreements.

DEFINITIONS

8-108 Definitions, interpretations.

WILDLIFE AND PARKS COMMISSION REGULATIONS

8-109 Regulations and statutes: contents.
8-110 Powers.
8-111 Officers' duties.
8-112 Search.
8-113 Authority to enter private land.
8-114 Seizure without warrant.
8-115 Forfeiture.
8-116 Civil liability.
8-117 Maximum penalties.
8-118 Non-game species.
8-119 Waiver provision.

LICENSE INFORMATION

8-120 Residency.
8-121 Application for a license.
8-122 Validating licenses.
8-123 License classes and fees.
8-124 Special permits.
8-125 Basic license requirements.
8-126 Number of licenses issued.
8-127 Season limitations.
8-128 Bag limits.
8-129 Lost licenses.
8-130 Revoked licenses.

WATERFOWL

8-131 Waterfowl regulations.
8-132 Restrictions.
8-133 Closed season.
8-134 Shooting or hawking hours.
8-135 Field possession limit.
8-136 Wanton waste.
8-137 Tagging.
8-138 Possession of live birds.
8-139 Dressing.
8-140 Shipment.
8-141 [Reserved.]

BIG GAME REGULATIONS

8-142 Shooting hours.
8-143 Firearms.
8-144 Bow and arrow.
8-145 Legal animals.
8-146 Non-licensees.
8-147 Tagging and transportation.
8-148 Hunter orange.
8-149 Big game hunting.

RESTRICTIONS

8-150 Restrictions.
8-151 Flagging.
8-152 Visible bait.
8-153 Raw furs.
8-154 Trap checking.
8-155 Live furbearers.
8-156 Fishing regulations.
8-157 Trespass.
8-158 Retrieval.
8-159 Harassment.
8-160 Livestock and fences.
8-161 Closed areas.
8-162 Motor vehicles.
8-163 Artificial light.
8-164 Inspection.
8-165 Threatened and endangered species.
8-166 Bobcats.

FIREARMS POLICY

8-167 Definitions.
8-168 Firearms policy.
8-169 Administration of firearms.
8-170 Firearms; record.
8-171 Initial qualification requirements.
8-172 Procedures when a firearm is used.
8-173 Responsibility of the Senior Conservation Officer.
8-174 Responsibility of the Department of Wildlife and Parks Supervisor.
8-175 Responsibility of the Chief Administrative Officer.
8-176 Medical standards.
8-177 Misconduct.
8-178 Special permits.

WINNEBAGO TRIBAL CODE
TABLE OF CONTENTS

TITLE 8
ARTICLE 2
WATER MANAGEMENT
(Restated November 6, 2009)

8-201 Purposes.
8-202 Major actions.
8-203 Definitions.
8-204 Severability.
8-205 Composition of the committee.
8-206 Committee chairperson.
8-207 Committee meetings.
8-208 Duties.
8-209 Committee member provisions.
8-210 Listing of current uses.
8-211 Water resource information.
8-212 Public cooperation.
8-213 Declarations of new water use.
8-214 Inventory update.
8-215 Committee and administrator responsibilities.

WINNEBAGO TRIBAL CODE
TABLE OF CONTENTS

TITLE 9
GAMING
(Amended and Restated as of February 22, 2013)

ARTICLE 1
DEFINITIONS AND GENERAL PROVISIONS

9-101 Definitions.
9-102 Gaming permitted.
9-103 Tribe as sole owner.
9-104 Application of gaming revenues.
9-105 Distribution limitation.
9-106 Management authorized.
9-107 Governing laws.
9-108 Purpose.

TITLE 9
ARTICLE 2
TRIBAL GAMING COMMISSION

9-201 Establishment and composition of commission.
9-202 Qualifications of commissioners.
9-203 Meetings.
9-204 Resignation.
9-205 Removal.
9-206 Commission office.
9-207 Monthly reports.
9-208 Powers and duties of the gaming commission.
9-209 Compensation and expenses.
9-210 Commission budget.
9-211 Commission records.
9-212 Financial interest prohibited.
9-213 Rules.

TITLE 9
ARTICLE 3
LICENSING PROVISIONS

9-301 Required licenses.
9-302 Facility license.
9-303 Operator's license.
9-304 Licensing of employees and key employees.
9-305a License for distributor and suppliers.
9-305b Machine licenses.
9-305c Vendor license.
9-306 Provisional license.
9-307 Notification to national commission.
9-308 Certification of gaming devices; seizure of contraband authorized.
9-309 Access to premises and records.
9-310 All information confidential.
9-311 Duration of licenses.
9-312 License suspension; revocation.
9-313 Forms of licenses.
9-314 License application fee.
9-315 Background investigations.
9-316 Eligibility determination.
9-317 Forwarding applications and reports to the national commission.
9-318 Report to the national commission.
9-319 Granting a gaming license.
9-320 Application forms.
9-321 Burden of proof.

TITLE 9
ARTICLE 4
CLASS II GAMING

9-401 Gaming regulated.
9-402 Games authorized.

TITLE 9
ARTICLE 5
CLASS III GAMING

9-501 Gaming regulated.
9-502 Games authorized.
9-503 Gaming rules.
9-504 Rules displayed.
9-505 Gaming devices.
9-506 Security.
9-507 Commission rules.
9-508 Right of entry and inspection.
9-509 No credit.
9-510 Notification of violations.
9-511 Surveillance.

TITLE 9
ARTICLE 6
VIOLATIONS; PENALTIES

9-601 Role of Tribal prosecutor.
9-602 Tribal Court jurisdiction.
9-603 Prohibited acts.
9-604 Criminal violations penalties.
9-605 Civil violations.
9-606 Civil penalties.
9-607 Consent to jurisdiction.
9-608 Civil actions.
9-609 Administrative hearings.
9-610 Agent for service.

TITLE 9
ARTICLE 7
MISCELLANEOUS PROVISIONS

9-701 Sovereignty not waived.
9-702 Audits.
9-703 Contracts subject to audit.
9-704 Public safety.
9-705 Unclaimed winnings.
9-706 Saving clause.
9-707 Short title.
9-708 Repeal of prior law.
9-709 Customer disputes.
9-710 Customer rights regarding disputes.
9-711 Gaming commission action on customer disputes.
9-712 Right to exclude or remove.
9-713 Review and approval of gaming contracts.

WINNEBAGO TRIBAL CODE
TABLE OF CONTENTS

TITLE 10
GENERAL REVENUE AND TAX CODE
(As amended February 17, 2010)

TITLE 10
ARTICLE 1
TAXATION

10-101 Citation.
10-102 Purpose.
10-103 Tax Commission.
10-104 Composition of the Tax Commission.
10-105 Seal.
10-106 General Powers of the Tax Commission.
10-107 Rulemaking Authority.
10-108 Forms.
10-109 Tax Stamps and Licenses.
10-110 Records.
10-111 Bookkeeping.
10-112 Collection Account; Deposits.
10-113 Tax Commission Employees and Expenses.
10-114 Nepotism.
10-115-10-119 Reserved.
10-120 Collection of Taxes.
10-121 Collection of Delinquent Taxes.
10-122 Other Remedies.
10-123 Inventory of Seized Property.
10-124 Public Sale of Forfeited Property.
10-125 Exempt Property.
10-126-10-150 Reserved.
10-151 Administrative Appeals.
10-152 Limitations on Administrative Appeals.
10-153 Exhaustion of Administrative Remedies.
10-154 Suits against the Tax Commission.
10-155 Limitations on Suits against the Tax Commission.
10-156 Refunds to Taxpayers.
10-157-10-180 Reserved.
10-181 Forgery of Stamps or other tax instruments.
10-182 Offenses.
10-183 General Penalties.
10-184 Referrals for Federal Prosecution.
10-185 Interest.
10-186 Commencement of Actions.
10-187 Taxes Erroneously paid.
10-188 Penalties.
10-189 Records.

TITLE 10
ARTICLE 2
SALES TAX

10-200 Definitions.
10-201 Tax on sales of goods.
10-202 Exceptions.
10-203 Impact of tax.
10-204 Payment of tax.
10-205 Permit System.

TITLE 10
ARTICLE 3
GASOLINE TAX

10-300 Definitions.
10-301 Tax on sales of gasoline.
10-302 Exceptions.
10-303 Impact of tax.
10-304 Collection of tax.
10-305 Payment of tax.

TITLE 10
ARTICLE 4
CONSTRUCTION TAX

10-400 Definitions.
10-401 Construction Tax.
10-402 Subcontractors.
10-403 Payment Requirements.
10-404 Material Purchase Certificates.
10-405 State and Local Taxation.

TITLE 10
ARTICLE 5
BINGO TAX
[Repealed January 1, 2016]
[TCR 05-39, 16-39]

TITLE 10
ARTICLE 6
TOBACCO TAX

10-600 Definitions.
10-601 Sales of Tribal Cigarettes.
10-602 Internet Sales of Tribal Cigarettes.
10-603 Other Tribal Tobacco Products.
10-604 Compact Exceptions.
10-605 Wholesale Exceptions.
10-606 Impact of Tax.
10-607 Tax Collection.
10-608 Payment of Tax.
10-609 Effective Date.

TITLE 10
ARTICLE 7
HOTEL LODGING TAX
(As adopted January 16, 2012)

10-700 Definitions.
10-701 Imposition of Tax; Exemptions.
10-702 Records.
10-703 Returns.
10-704 Payment of Tax.
10-705 Assessment and Determination of Tax.
10-706 Notices.
10-707 Licenses and Registration.
10-708 Interest and Penalties.

WINNEBAGO TRIBAL CODE
TABLE OF CONTENTS

TITLE 11
BUSINESS CORPORATION CODE

ARTICLE 1.00
CITATION; DEFINITIONS

11-001 Citation.
11-011 Definitions.

ARTICLE 1.02
APPLICATION

11-021 Repeal of previous business corporation code.
11-041 Reservation of right.
11-061 Corporations wholly owned by the Tribe.
11-081 Sovereign immunity of the Tribe not waived.

ARTICLE 1.10
INCORPORATION; ARTICLES

11-101 Purposes.
11-105 Incorporators.
11-111 Articles.
11-115 Corporate name.
11-117 Reserved name.
11-121 Registered office; registered agent.
11-123 Change of registered office or registered agent; change of name of registered agent.
11-131 Amendment of Articles.
11-133 Procedure for amendment before issuance of shares.
11-135 Procedure for amendment after issuance of shares.
11-137 Class or series voting on amendments.
11-139 Articles of amendment.
11-141 Effect of amendment.
11-151 Filing articles.
11-153 Effective date of articles.
11-155 Presumption; Certificate of Incorporation.

ARTICLE 1.16
POWERS

11-161 Powers.
11-163 Corporate seal.
11-165 Effect of lack of power; ultra vires.

ARTICLE 1.17
ORGANIZATION; BYLAWS

11-171 Organization.
11-181 Bylaws.

ARTICLE 2
BOARD

11-201 Board.
11-203 Number.
11-205 Qualifications; election.
11-207 Terms.
11-209 Acts not void or voidable.
11-211 Compensation.
11-213 Classification of directors.
11-215 Cumulative voting for directors.
11-221 Resignation.
11-223 Removal of directors.
11-225 Vacancies.
11-231 Board meetings.
11-233 Absent directors.
11-235 Quorum.
11-237 Act of the board.
11-239 Action without meeting.
11-241 Committees.
11-251 Standard of conduct.
11-255 Director conflicts of interest.

ARTICLE 3
OFFICERS

11-301 Officers required.
11-305 Duties of required officers.
11-311 Other officers.
11-315 Multiple offices.
11-321 Officers deemed elected.
11-331 Contract rights.
11-341 Resignation; removal; vacancies.
11-351 Delegation.
11-361 Standard of conduct.

ARTICLE 4
SHARES; SHAREHOLDERS

11-401 Authorized shares.
11-402 Share dividends, divisions, and combinations.
11-403 Subscriptions for shares.
11-405 Consideration for shares; value and payment; liability.
11-413 Preemptive rights.
11-417 Share certificates; issuance and contents; uncertificated shares.
11-419 Lost share certificates; replacement.
11-423 Fractional shares.
11-425 Liability of subscribers and shareholders with respect to shares.
11-429 Restriction on transfer or registration of securities.
11-431 Regular meetings of shareholders.
11-433 Special meetings of shareholders.
11-435 Notice.
11-436 Electronic communications.
11-437 Act of the shareholders.
11-441 Action without a meeting.
11-443 Quorum.
11-445 Voting rights.
11-447 Voting of shares by organizations and legal representatives.
11-449 Proxies.
11-453 Voting trusts.
11-455 Shareholder voting agreements.
11-457 Shareholder control agreements.
11-461 Books and records; inspection.
11-463 Financial statements.
11-467 Equitable remedies.
11-471 Rights of dissenting shareholders.
11-473 Procedures for asserting dissenter's rights.

ARTICLE 5
LOANS; OBLIGATIONS; DISTRIBUTIONS

11-501 Loans; guarantees; suretyship.
11-505 Advances.
11-521 Indemnification.
11-551 Distributions.
11-553 Powers to acquire shares.
11-557 Liability of shareholders for illegal distributions.
11-559 Liability of directors for illegal distributions.

ARTICLE 6
MERGER, EXCHANGE, TRANSFER
(As revised March 30, 2015)

11-600 Definitions
11-601 Merger, exchange, transfer.
11-611 Plan of merger or exchange.
11-613 Plan approval.
11-615 Articles of merger or exchange; certificate.
11-621 Merger of subsidiary.
11-631 Abandonment.
11-641 Effective date of merger or exchange; effect.
11-651 Merger or exchange with foreign corporation.
11-661 Transfer of assets; when permitted.

ARTICLE 7
DISSOLUTION

11-701 Methods of dissolution.
11-711 Voluntary dissolution by incorporators.
11-721 Voluntary dissolution by shareholders.
11-723 Filing notice of intent to dissolve; effect.
11-727 Dissolution procedure for corporations that give notice to creditors and claimants.
11-729 Dissolution procedure for corporations that do not give notice.
11-731 Revocation of dissolution proceedings.
11-734 Effective date of dissolution; certificate.
11-741 Supervised voluntary dissolution.
11-751 Judicial intervention; equitable remedies or dissolution.
11-753 Procedure in involuntary or supervised voluntary dissolution.
11-755 Qualifications of receivers; powers.
11-757 Action by Tribal Council.
11-759 Filing claims in proceedings to dissolve.
11-761 Discontinuance of dissolution proceedings.
11-763 Decree of dissolution.
11-765 Filing decree.
11-771 Deposit with Tribal Treasurer of amount due certain shareholders.
11-781 Claims barred; exceptions.
11-783 Right to sue or defend after dissolution.
11-791 Omitted assets.

ARTICLE 8.01
EXTENSION

11-801 Extension after duration expired.
11-805 Effect of extension.

ARTICLE 8.21
CORPORATE REGISTRATION

11-821 Winnebago Tribal corporate registration.

ARTICLE 9
ACTIONS AGAINST CORPORATIONS

11-901 Service of process on corporation.
11-917 Court action; remedies and penalties.

ARTICLE 10
CORPORATIONS WHOLLY OWNED BY THE TRIBE

11-1001 Scope.
11-1002 Application.
11-1003 Special powers, privileges and immunities of corporations wholly owned by the Tribe.
11-1010 Board.
11-1021 Shares in corporations wholly owned by the Tribe; shareholders; voting.
11-1022 Liability of Tribe as shareholder.
11-1023 Shareholder meetings.
11-1030 Assets, distribution of income.
11-1091 Voluntary dissolution by incorporators.

ARTICLE 11
EFFECTIVE DATE AND AUTHORITY

11-1101 Severability; effect of invalidity of part of this Code.
11-1111 Effective date.
11-1113 Authority.
11-1117 No impairment of contracts.

ARTICLE 12
CONVERSION
(As adopted March 30, 2015)

11-1201 Definitions.
11-1202 Conversion.
11-1203 Conversion of Domestic Corporation into Another Business Entity.
11-1204 Plan of Conversion for Domestic Corporation into Another Business Entity.
11-1205 Filing of Certificate of Conversion for Domestic Corporation Converting into Another Business Entity.
11-1206 Effect of Conversion of Domestic Corporation into Another Business Entity.
11-1207 Conversion of Business Entity into a Domestic Corporation.
11-1208 Plan of Conversion for Business Entity into a Domestic Corporation.
11-1209 Effect of Conversion of Business Entity into Domestic Corporation.
11-1210 Articles of Entity Conversion.
11-1211 Surrender of Charter Upon Conversion.
11-1212 Articles Not Exclusive.

ARTICLE 13
DOMESTICATION
(As adopted March 30, 2015)

11-1301 Domestication.
11-1301 Action on a Plan of Domestication.
11-1303 Articles of Domestication.
11-1304 Surrender of Charter Upon Domestication.
11-1305 Effect of Domestication.
11-1306 Abandonment of Domestication.
11-1307 Article not exclusive.

WINNEBAGO TRIBAL CODE
TABLE OF CONTENTS

TITLE 11A
BUSINESS REGULATION AND ECONOMIC DEVELOPMENT

ARTICLE 2
WINNEBAGO INDUSTRIAL DEVELOPMENT FINANCING SERVICE ACT
(As redesignated March 9, 1994)

11A-201 Citation and special definition.
11A-202 Establishment and purpose of the Winnebago Industrial Development Financing Service.
11A-203 Tribal credit officer to operate service, business of Industrial Development Financing Service.
11A-204 Federal Deposit Insurance Corporation Act.
11A-205 Pledge of assets generally.
11A-206 Indemnification for defending suits.
11A-207 Property acquisition.
11A-208 Engagement of officers and employees.
11A-209 Removal and discharge of appointees.
11A-210 Capital of Industrial Development Financing Service.
11A-211 Tribal funds to be deposited in the Winnebago Industrial Development Financing Service.
11A-212 Non-liability of officers and sureties after deposit.
11A-213 Deposits may be received from any source.
11A-214 Deposits to credit of other financing services.
11A-215 Guaranty of deposits-exemption from taxation.
11A-216 Interest rates; time deposits; limitations; charges.
11A-217 Deposits may be made in any bank.
11A-218 Financing service may make loans.
11A-219 Loans to treasury account authorized.
11A-220 Investments in government sponsored stocks.
11A-221 Fund transfers to Tribal departments; how credited.
11A-222 Warrants against transferred funds.
11A-223 Assignment patents and sales of land acquired through foreclosure.
11A-224 Name in which business conducted; execution of industrial instruments.
11A-225 Civil actions against financing service.
11A-226 Surety not required for financing service in civil actions.
11A-227 No execution of financing service property.
11A-228 Audit of financing service accounts and records.
11A-229 Indian Financing Act authorization.

UTILIZATION OF FINANCING SERVICE IN
INDUSTRIAL DEVELOPMENT

11A-230 Declaration and finding of public purpose.
11A-231 Financing service advisory board.
11A-232 Authority of board; capital pool created.
11A-233 Minimum standards for loans from capital pool.
11A-234 Mortgage program administration.
11A-235 Purpose.
11A-236 Definitions.
11A-237 Powers.
11A-238 Default by mortgagors.
11A-239 Mortgage insurance fund.
11A-240 Insurance of mortgages.
11A-241 Mortgage insurance premiums.
11A-242 Expenses.
11A-243 Mortgages eligible for investment.
11A-244 Limitation; credit of financing service and Tribe not pledged.

WINNEBAGO TRIBAL CODE
TABLE OF CONTENTS

TITLE 11A
ARTICLE 3
WINNEBAGO ECONOMIC DEVELOPMENT ACT OF 1989
(As redesignated March 9, 1994)
GENERAL PROVISIONS

11A-301 Citation.
11A-302 Declaration of need and legislative findings.
11A-303 Purposes.
11A-304 Definitions.

BOARD OF TRUSTEES

11A-305 Economic development authority created.
11A-306 Board created; number.
11A-307 Appointment of board members.
11A-308 Qualifications of board members.
11A-309 Term of office.
11A-310 Officers.
11A-311 Removal of board members.
11A-312 Compensation to be paid.
11A-313 Quorum.
11A-314 Duties of officers.
11A-315 Meetings.

POWERS OF THE AUTHORITY

11A-316 Period of existence.
11A-317 Power to sue and be sued.
11A-318 General powers.
11A-319 Securing financial assistance.
11A-320 Certain property laws do not apply.

OBLIGATIONS

11A-321 Authority to issue obligations.
11A-322 No personal liability on obligations.
11A-323 No Tribal liability on obligations.
11A-324 Obligations are tax exempt.
11A-325 Manner of issuance and sales.
11A-326 Obligations are negotiable.
11A-327 Security for obligations.
11A-328 Actions to be filed for record.

MISCELLANEOUS PROVISIONS

11A-329 Reports.
11A-330 Acquisition of interests prohibited.
11A-331 Compliance with federal law.
11A-332 Fidelity bonds.
11A-333 Property of authority as public property.
11A-334 No execution on authority property.
11A-335 Personal policies to be enacted.
11A-336 Judicial notice.
11A-337 Special certificate of incorporation.
11A-338 Separability of provisions.
11A-339 Records and audit.
11A-340 Authorization of appropriations.
11A-341 Rules, regulations and procedures.

MANAGEMENT OF TRIBAL ENTERPRISES

11A-342 General management provisions.
11A-343 Achieving independent status as a Tribal enterprise.
11A-344 Chartering of independent Tribal enterprises.

WINNEBAGO TRIBAL CODE
TABLE OF CONTENTS

TITLE 11B
LIMITED LIABILITY COMPANY CODE
(As adopted January 13, 2010)
ARTICLE 1
GENERAL PROVISIONS

11B-101 Short Title.
11B-102 Purposes; Sovereign Immunity.
11B-103 Scope.
11B-104 Applicable law.
11B-105 Definitions.
11B-106 Name.
11B-107 Registered Office and Registered Agent.
11B-108 Tribe as an Owner.
11B-109 Nature of business.
11B-110 Execution of Documents.
11B-111 Filing.
11B-112 Certificate of Status.
11B-113 Execution by Judicial Act.
11B-114 Interstate application.

ARTICLE 2
OPERATING AGREEMENT AND DEALING WITH LLC

11B-201 Articles of Organization.
11B-202 Agency Power of Owners and Managers.
11B-203 Admission of Owners and Managers.
11B-204 Knowledge of or Notice to Owner or Manager.
11B-205 Liability of Owners to Third Parties.
11B-206 Parties to Action
11B-207 Authority to Sue.

ARTICLE 3
OWNERS AND MANAGERS

11B-301 Management.
11B-302 Duties.
11B-303 Limitation of Liability and Indemnification.
11B-304 Voting.
11B-305 Records and Information.
11B-306 Admission of Owners.
11B-307 Dissociation.

ARTICLE 4
FINANCE

11B-401 Contributions.
11B-402 Liability for Contribution.
11B-403 Allocation of Profits and Losses.

ARTICLE 5
NON-LIQUIDATING DISTRIBUTIONS

11B-501 Interim Distributions.
11B-502 Allocation of Distributions.
11B-503 Distribution Upon Partial Redemption.
11B-504 Distribution Upon Dissociation.
11B-505 Distribution in Kind.
11B-506 Right to Distribution.
11B-507 Limitations of Distributions.
11B-508 Liability for Wrongful Distribution.

ARTICLE 6
OWNERSHIP AND TRANSFER OF PROPERTY

11B-601 Ownership of LLC Property.
11B-602 Transfer of Property.
11B-603 Nature of Interest.
11B-604 Assignment of LLC Interest.
11B-605 Rights of Judgment Creditor.
11B-606 Right of Assignee to Become an Owner.
11B-607 Powers of Legal Representative.

ARTICLE 7
DISSOLUTION

11B-701 Dissolution.
11B-702 Judicial Dissolution.
11B-703 Winding Up.
11B-704 Distribution of Assets.
11B-705 Articles of Dissolution.
11B-706 Known Claims Against Dissolved LLC.
11B-707 Unknown or Contingent Claims.

ARTICLE 8
MERGER, CONVERSION, AND DOMESTICATION
(As revised March 30, 2015)

11B-801 Definitions.
11B-802 Merger.
11B-803 Approval of Merger.
11B-804 Plan of Merger.
11B-805 Articles of Merger.
11B-806 Effects of Merger.
11B-807 Right to Object.
11B-808 Conversion.
11B-809 Conversions of Domestic LLC into Another Business Entity.
11B-810 Plan of Conversion for Domestic LLC into Another Business Entity.
11B-811 Filing of Certificate of Conversion for Domestic LLC.
11B-812 Effect of Conversion of Domestic LLC into Another Business Entity.
11B-813 Conversion of Business Entity into a Domestic LLC.
11B-814 Plan of Conversion Business Entity into a Domestic LLC.
11B-815 Effect of Conversion of Business Entity in Domestic LLC.
11B-816 Domestication.
11B-817 Action on Plan of Domestication by Domesticating LLC.
11B-818 Filings Required for Domestication; Effective Date.
11B-819 Effect of Domestication.
11B-820 Restrictions on Approval of Mergers, Conversions, and Domestications.
11B-821 Article Not Exclusive.

ARTICLE 9
LIMITED LIABILITY COMPANIES WHOLLY-OWNED BY THE TRIBE

SUBPART 1
GENERAL PROVISIONS FOR TRIBALLY-OWNED LLC'S

11B-911 Tribally-Owned Companies.
11B-912 Tribally-Owned Subsidiary Companies.
11B-913 Privileges and Immunities.
11B-914 Ownership.
11B-915 Project Companies with Non-Tribal Owners.
11B-916 Purpose of Tribally-Owned LLC's.
11B-917 Waiver of Sovereign Immunity.

SUBPART 2
SPECIAL FORMATION REQUIREMENTS FOR TRIBALLY-OWNED LLC'S

11B-921 Formation.
11B-922 Additional Requirements for the Articles of Organization.

SUBPART 3
MANAGEMENT OF TRIBALLY-OWNED LLC'S

11B-931 Management.

SUBPART 4
DECISIONS AND VOTING FOR TRIBALLY-OWNED LLC'S

11B-941 Voting.

SUBPART 5
DISTRIBUTIONS FOR TRIBALLY-OWNED LLC'S

11B-951 Distributions of Income.

SUBPART 6
ADDITIONAL REPORTS AND AUDITS

11B-961 Audit.
11B-962 Financial, Business, and Planning Information.

SUBPART 7
ACTIONS AGAINST TRIBALLY-OWNED LLC'S

11B-971 Court Actions By a Tribe Authorized.
11B-972 Tribal Approval Required.
11B-973 Relief Available.

WINNEBAGO TRIBAL CODE
TABLE OF CONTENTS

TITLE 12
FAMILY RELATIONS

ARTICLE 1

[Reserved]

TITLE 12
ARTICLE 2
DOMESTIC AND FAMILY VIOLENCE ACT
(As amended and approved December 7, 2005)

12-201 Purpose and Findings.
12-202 Definitions.
12-203 Domestic or Family Violence; Crime Involving Domestic or Family Violence; Penalties; Mandatory Intervention.
12-204 Possession of a Firearm.
12-205 Duties of Law Enforcement to Victim; Required Notice.
12-206 Determination of predominant aggressor; required report.
12-207 Authority of Law Enforcement to Seize Weapons.
12-208 Conditions of Release.
12-209 Mandatory Arrest for Violation of Conditions of Release.
12-210 Written procedures for Prosecution.
12-211 Duty of Prosecutor to Notify Victim.
12-212 Record of Dismissal.
12-213 Dismissal Prohibited Due to Civil Compromise.
12-214 Rights of Victims; Duty of Prosecutor to Inform.
12-215 Spousal Privileges Inapplicable.
12-216 Advocate-Victim Privilege.
12-217 Residential Confinement; Visitation in Home of Victim Prohibited.
12-218 Diversion prohibited.
12-219 Required Policies and Procedures.
12-220 Eligible Petitioners for Protection Orders.
12-221 Uniform Documents for Petitions and Orders; Required Statements; Duties of Clerk.
12-222 Jurisdiction; venue; residency not required to petition.
12-223 Continuing Duty to Inform Court of Other Proceedings; Effect of Other Proceedings; Delay of Relief Prohibited; Omission of Petitioner's Address.
12-224 Emergency Order for Protection; Available Relief; Availability of Judge or Court Officer.
12-225 Order for Protection; Modification of Orders; Relief Available Ex Parte; Relief Available After Hearing; Duties of the Court; Duration of Order.
12-226 Required Hearings; Duty When Order for Protection Denied.
12-227 Effect of Action by Petitioner or Respondent on Order.
12-228 Denial of Relief Prohibited.
12-229 Mutual Orders for Protection.
12-230 Mandatory Arrest for Certain Violations of Orders for Protection.
12-231 Violation of Certain Orders for Protection.
12-232 Court-ordered and Court-referred Mediation Prohibited.
12-233 Court Costs and Fees.
12-234 Court-referred Assistance to Victims of Domestic and Family Violence.
12-235 Registration and Enforcement of Foreign Orders for Protection; Duties of Court Clerk.
12-236 Mandatory Training.

TITLE 12
ARTICLE 3
WINNEBAGO CHILD SUPPORT ENFORCEMENT IV-D PROGRAM ACT;
ESTABLISHMENT AND DUTIES

12-301 Act, How Cited.
12-302 Purpose.
12-303 Definitions.
12-304 Authority and Responsibility of the WTN-CSE.
12-305 Program Participation and Funding.

WINNEBAGO TRIBAL CODE
TABLE OF CONTENTS

TITLE 12
ARTICLE 4
WINNEBAGO PARENTAGE ACT

12-401 Act, How Cited.
12-402 Purpose of Act.
12-403 Definitions.
12-404 Subject Matter Jurisdiction.
12-405 Personal Jurisdiction.
12-406 Protection of Participants.
12-407 Authorized Release of Case Records and Other Information.
12-408 Publication of Proceedings.
12-409 Penalty for Unauthorized Disclosure.
12-410 Notice.
12-411 Establishment of Parent-Child Relationship.
12-412 No Discrimination Based on Marital Status.
12-413 Consequences of Establishment of Parentage.
12-414 Presumption of Paternity.
12-415 Tribal Acknowledgement and Denial of Paternity – Duties of the WTN-CSEP.
12-416 Tribal Acknowledgment of Paternity – Execution.
12-417 Tribal Denial of Paternity by a Presumed Father.
12-418 Rules for Tribal Acknowledgment and Denial of Paternity.
12-419 Effect of Tribal Acknowledgment or Denial of Paternity.
12-420 No Filing Fee.
12-421 Proceeding for Rescission.
12-422 Challenge After Expiration of Period for Rescission.
12-423 Procedure for Rescission or Challenge.
12-424 Full Faith and Credit.
12-425 Release of Information – Tribal Acknowledgment or Denial of Paternity.
12-426 Scope of Genetic Testing.
12-427 Order for Genetic Testing.
12-428 Requirements for Genetic Testing.
12-429 Report of Genetic Testing.
12-430 Genetic Testing Results – Rebuttal.
12-431 Costs of Genetic Testing.
12-432 Additional Genetic Testing.
12-433 Genetic Testing When Specimens Not Available.
12-434 Deceased Individual.
12-435 Identical Brothers.
12-436 Confidentiality of Genetic Testing.
12-437 Proceeding to Adjudicate the Parentage of a Child – Authorization.
12-438 Standing to Maintain Proceeding.
12-439 Parties to Proceeding.
12-440 No Limitation – Child Having No Presumed, Acknowledged, or Adjudicated Father.
12-441 Limitation – Child Having Presumed Father.
12-442 Authority to Deny Motion for Genetic Testing.
12-443 Limitation – Child Having Acknowledged or Adjudicated Father.
12-444 Joinder of Proceedings.
12-445 Proceeding Before Birth.
12-446 Child as Party – Representation.
12-447 Admissibility of Results of Genetic Testing – Expenses.
12-448 Consequences of Declining Genetic Testing.
12-449 Admission of Paternity Authorized.
12-450 Temporary Order.
12-451 Rules of Adjudication of Paternity.
12-452 Jury Prohibited.
12-453 Closed Hearings.
12-454 Order on Default.
12-455 Dismissal for Want of Prosecution.
12-456 Order Adjudicating Parentage.
12-457 Binding Effect of Determination of Parentage.
12-458 Liability for Collection of Support.
12-459 Application of the Winnebago Parentage Act.

WINNEBAGO TRIBAL CODE
TABLE OF CONTENTS

TITLE 12
FAMILY RELATIONS
ARTICLE 5
WINNEBAGO CHILD SUPPORT ACT
(As revised May 21, 2014)

PRELIMINARY PROVISIONS

12-501 Act, How Cited.
12-502 Findings.
12-503 Purpose.
12-504 Definitions.
12-505 Jurisdiction.
12-506 Protection of Participants — Confidentiality of Case Records.
12-507 Authorized Release of Case Records and Other Information.
12-508 Penalty for Unauthorized Disclosure.
12-509 Attorney Represents Tribe's Interest in the Enforcement of Child Support Obligations.
12-510 Notice.

ESTABLISHMENT & MODIFICATION OF CHILD SUPPORT

12-511 Duty to Support Children.
12-512 Liability of Stepparent For Support.
12-513 Termination of Parental Rights – Duty of Support.
12-514 Support For Children After Majority – Retroactive Application.
12-515 Support by Tribe – Liability of Parent's Estate.
12-516 Allowance to Parent for Support of Child.
12-517 Duration of Child Support Obligations.
12-518 Periodic Review of Child Support Orders.
12-519 Notice of Periodic Review of Child Support Orders.
12-520 Obligor's Duties Upon Review – Failure to Provide Information.
12-521 Notice of Review Determination.
12-522 Motion for Amendment of Child Support Order – How Made – Presumption When Obligor's Income Unknown.
12-523 Request For Review – Notice of Right to Request Review.

TRIBAL TANF & ASSIGNMENT OF CHILD SUPPORT PAYMENTS TO THE WTN-CSEP

12-524 Recipients of Tribal TANF - Assignment of Support Payments.
12-525 Families-First Distribution of Child Support Arrearages.
12-526 Existing Assignments.
12-527 Effect of Assignment.
12-528 Cooperation with Winnebago Tribe of Nebraska Child Support Enforcement Program (WTN-CSEP).
12-529 Non-Cooperation with the WTN-CSEP.
12-530 Assignment of Rights; Judgment.

LOCATION OF A MISSING OBLIGOR, ASSETS, AND OBLIGEE BY THE WTN-CSEP

12-531 Location Activities of the WTN-CSEP.

PAYMENTS, COLLECTIONS, DISTRIBUTION, AND ARREARS

12-532 Mandatory Payment of Child Support Obligations to the WTN-CSEP.
12-533 Collections and Distribution – General Rule, Current Receipt of Tribal TANF, Former Receipt of Tribal TANF.
12-534 Overpayments.
12-535 Arrears.
12-536 Child Support Order – Required Interest Statement on Arrears.
12-537 Interest Waived on Arrearages.
12-538 Offsets of Child Support.
12-539 Agreements to Waive Child Support.

CIVIL REMEDIES FOR ENFORCEMENT OF CHILD SUPPORT ORDERS

12-540 Income Withholding Order.
12-541 Immediate Income Withholding.
12-542 Subsequent Income Withholding Order – Provision of Notice of Impact of Income Withholding Law to Obligors.
12-543 Requests by Obligee for Income Withholding – Approval – Procedures and Standards.
12-544 Procedure – Notice to Obligor.
12-545 Hearing Upon Obligor's Request.
12-546 Mandatory Federal Income Withholding Form – Effect of Income Withholding Order.
12-547 Voluntary Income Withholding for Child Support – Limitations.
12-548 Service of Income Withholding Order on Income Payer.
12-549 Income Withholding - Duties and Liabilities of Income Payer under Income Withholding Order.
12-550 Requests for Information from Income Payer.
12-551 Amendment – Termination of Income Withholding Order.
12-552 Interstate Income Withholding – Initiation by the Winnebago Tribe of Nebraska to Another Jurisdiction.
12-553 Child Support Exempt from Process.
12-554 Administrative Seek Employment Orders.
12-555 Driver's License and Occupational License Suspension, Motor Vehicle Lien.
12-556 Contempt Proceedings for Nonpayment of Child Support.

INTERGOVERNMENTAL CHILD SUPPORT CASES – AFFORDING FULL FAITH AND CREDIT

12-557 Full Faith and Credit of Foreign Child Support Orders.

REGISTRATION OF FOREIGN CHILD SUPPORT ORDER FOR ENFORCEMENT

12-558 Registration of Foreign Child Support Order for Enforcement.
12-559 Effect of Registration for Enforcement.
12-560 Choice of Law.
12-561 Notice of Registration of Order.
12-562 Procedure to Contest Validity or Enforcement of Registered Order.
12-563 Burden on Party Contesting the Registration or Enforcement.

REGISTRATION OF FOREIGN CHILD SUPPORT ORDERS FOR MODIFICATION

12-564 Registration Child Support Order for Modification.
12-565 Modification of Child Support Order of Another Tribe or State.
12-566 Application of the Winnebago Child Support Act.
12-567 Transferring of a Foreign Child Support or Custody Case.
12-568 Effect of Accepting a Transferred Case.
12-569 Notice of Acceptance of Transferred Case.
12-570 Procedure to Contest the Acceptance of a Transferred Case.
12-571 Burden on Party Contesting the Transfer of a Case.

WINNEBAGO TRIBAL CODE
TABLE OF CONTENTS

TITLE 13
TRIBAL EMPLOYMENT RIGHTS ORDINANCE (TERO)

Adopted September 19, 2005
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TITLE 14
ARTICLE 1
PROBATE

14-101 Jurisdiction.
14-102 General definitions.
14-103 Evidence as to death or status.
14-104 Records.
14-105 Oaths.
14-106 Notices.
14-107 Renunciation of inheritance.
14-108 Effect of divorce, annulment or decree of separation.
14-109 Effect of fraud and evasion.
14-110 Disqualification of a willful slayer.
14-111 Petition for appointment of administrator or executor.
14-112 Priorities of appointment.
14-113 Duties of administrator or executor.
14-114 Oath and letters of appointment.
14-115 Notice to creditors.
14-116 Priority of payment of demands against the estate.
14-117 Distribution of property if no taker.
14-118 Restrictions on interests.
14-119 Status of heirs.
14-120 Debts owed to the decedent.
14-121 Reopening of estates.
14-122 Rule of interpretation.
14-123 Construction.
14-124 Severability.
14-125 Citation.
14-126 Who may make a will.
14-127 Execution.
14-128 Holographic will.
14-129 Self-proved will.
14-130 Who may witness.
14-131 Choice of law as to execution.
14-132 Revocation by writing or by act a will or any part thereof is revoked.
14-133 Revocation by divorce; no revocation by other changes of circumstances.
14-134 Revival of revoked will.
14-135 Incorporation by reference.
14-136 Events of independent significance.
14-137 Requirement that devisee survive testator by one hundred hours.
14-138 Simultaneous death.
14-139 Rules of construction and intention.
14-140 Construction that will passes all property; after-acquired property.
14-141 Anti-lapse; deceased devisee; class gifts.
14-142 Failure of testamentary provision.
14-143 Exercise of power of appointment.
14-144 Non-exoneration.
14-145 Construction of generic terms to accord with relationship as defined for intestate successions.
14-146 Ademption by satisfaction.
14-147 Petition for letters testamentary.
14-148 Qualification of executor.
14-149 Appointment of executor.
14-150 Duties of executor; bond.
14-151 Creditors.
14-152 Accounting.
14-153 Distribution; closing estate.
14-154 Distribution; order in which assets appropriated; abatement.
14-155 Property discovered after estate closed.
14-156 Personal representative's and attorney's fees.
14-157 Homestead allowance.
14-158 Exempt property.
14-159 Family allowance.
14-160 Source, determination and documentation.
14-161 Applicable law.

WINNEBAGO TRIBAL CODE
TABLE OF CONTENTS

TITLE 15
UTILITIES
(As adopted by Resolution #07-53, March 6, 2007)

ARTICLE 1
LEGISLATIVE FINDINGS AND PURPOSE

15-101 Sovereign Power to Regulate.
15-102 Critical Need for Utility Regulation on Reservation.
15-103 Demonstrably Serious Impacts of Utility Activities upon Economic Security, Health and Welfare of the Winnebago Tribe of Nebraska and Winnebago Tribal Members.
15-104 State Jurisdiction and Regulation Not Applicable within Winnebago Reservation.
15-105 Finding of Consensual Relations between Utilities Operating Within Reservation and the Tribe, Tribal Members and Non-Members of Tribe.
15-106 Illegality of State Tax Collection by Utilities.
15-107 Benefits Provided by Tribal Government to Utilities.
15-108 Purpose.
15-109 Scope of Services to be Regulated.
15-110 Territory, Persons and Property Affected.
15-111 Explicit and implicit Intention for State Law Preemption.

TITLE 15
ARTICLE 2
GENERAL PROVISIONS

15-201 Title and Date.
15-202 Sovereign Immunity.
15-203 Definition of Terms.

TITLE 15
ARTICLE 3
WINNEBAGO TRIBAL UTILITY BOARD; REGULATORY

15-301 Creation of Winnebago Tribal Utility Board.
15-302 Number and Selection of Board Members.
15-303 Terms of Office.
15-304 Board Qualifications.
15-305 Initial Appointment of the Utility Board.
15-306 Vacancies.
15-307 Resignations.
15-308 Removals.
15-309 Officers of the Board and Duties of Officers.
15-310 Compensation.
15-311 Quorum
15-312 Majority Vote.
15-313 General Procedures of the Board.
15-314 Tribal Utility Account Established.
15-315 Jurisdiction of Board.
15-316 Powers and Duties of Board With Respect to Utilities.
15-317 Annual Reports by Utilities.
15-318 Production of Records.
15-319 Investigation.
15-320 Hearings; Examiner.
15-321 Rules of the Board.
15-322 Board Employees and Expenses.

TITLE 15
ARTICLE 4
PUBLIC UTILITIES: RESPONSIBILITIES, DUTIES, REQUIREMENTS

15-401 Duty to Provide Adequate Service.
15-402 Unauthorized Utilities Facilities Prohibited.
15-403 Duty to Produce Information on Reservation Easements.
15-404 Disconnection or Discontinuation of Service.

TITLE 15
ARTICLE 5
ELECTRIC UTILITY SERVICE ON WINNEBAGO RESERVATION

15-501 Assigned Service Areas; Nonexclusive Franchise Requirement.
15-502 Franchise Service Rights; Term of Franchise.
15-503 Interconnection Standards and Obligations.
15-504 Net Metering.
15-505 Energy Conservation & Energy Efficiency.
15-506 Lower Income Programs.
15-507 Environmental Obligations.
15-508 Ownership of Wires and Facilities.
15-109 Valuation of Electric Utility Property. [Reserved]

TITLE 15
ARTICLE 6
TELECOMMUNICATIONS SERVICE
[Reserved]

TITLE 15
ARTICLE 7
WATER SERVICE
[Reserved]

TITLE 15
ARTICLE 8
WASTEWATER SERVICE
[Reserved]

TITLE 15
ARTICLE 9
GAS UTILITIES
[Reserved]

TITLE 15
ARTICLE 10
HEATING UTILITIES
[Reserved]

TITLE 15
ARTICLE 11
OTHER UTILITIES
[Reserved]

TITLE 15
ARTICLE 12
TRIBAL UTILITY BOARD – ENTERPRISE
[Reserved]

WINNEBAGO TRIBAL CODE
TABLE OF CONTENTS

TITLE 16
CIVIL TRESPASS

ARTICLE 1
CIVIL TRESPASS STATUTE

16-100 Citation.
16-101 Purpose.
16-102 Definitions.
16-103 Applicability.
16-104 Notice of trespass.
16-105 Enforcement.
16-106 Enforcement by United States.
16-107 Civil penalties.
16-108 Interest on penalties.
16-109 Review by the Chief Administrative Officer.
16-110 Actions by hearing officer.
16-111 Enforcement after appeal.
16-112 Actions in the Tribal Court.
16-113 Severability.
16-114 Effective date.
16-115 Amendment.

WINNEBAGO TRIBAL CODE
TABLE OF CONTENTS

TITLE 17
INTERESTS IN REAL PROPERTY
ARTICLE 1
PART A
GENERAL PROVISIONS

17-201 Applicability of Article and purpose.
17-202 Tribal court jurisdiction.
17-203 Definitions.
17-204 Recording.
17-205 Priority.
17-206 Tribal notice.
17-207 Service of process and procedures.

TITLE 17
ARTICLE 1
PART B
EVICTION PROCEDURES

17-208 Unlawful detainer.

TITLE 17
ARTICLE 1
PART C
FORECLOSURE OF INTERESTS IN REAL PROPERTY

17-216 Filing of petitions.
17-217 Cure of default by subordinate lienholder or other lienholder.
17-218 Judgment in favor of the secretary for default of leasehold mortgage.
17-219 Sale of premises ordered by Tribal Court.
17-220 Limitation on power of Tribal Court.
17-221 Suspension of activity on debt.
17-222 Inclusion of co-debtor in action.
17-223 Complainants; disclosure obligations.
17-224 Effect of prior judgment.
17-225 Sale of premises by police or Tribal Court officer.
17-226 Publication and posting notice of sale.
17-227 Content of notice.
17-228 Transfer of property to purchaser.
17-229 Application of proceeds to discharge of debt and ownership surplus.
17-230 Disposition of unclaimed surplus.
17-231 Cure period.
17-232 Stay of proceedings upon payment by defendant of sums due.
17-233 Sale of premises in parcels.
17-234 Order of sale upon default in payment of installments.
17-235 Sale of entire property.
17-236 Disposition of proceeds of sale of entire property.
17-237 Actions to be taken upon satisfaction or payment.
17-238 Fee lands not affected.
17-239 Fee land foreclosures.

WINNEBAGO TRIBAL CODE
TABLE OF CONTENTS

TITLE 18
GUARDIANSHIP AND CONSERVATORSHIP

(As adopted March 9, 2011)

TITLE 18
ARTICLE 1
PRELIMINARY PROVISIONS

18-101 Citation.
18-102 Declaration of policy.
18-103 Authority.
18-104 Jurisdiction.
18-105 Civil action.
18-106 Definitions.
18-107 Severability.
18-108 Construction.
18-109 Applicability of Rules of Civil Procedure.
18-110 Penalties.
18-111 Effective Date.

TITLE 18
ARTICLE 2
PROCEDURES AND PROVISIONS APPLICABLE TO
GUARDIANSHIPS AND CONSERVATORSHIPS

18-201 Pleadings.
18-202 Reports.
18-203 Combining Petitions.
18-204 Same person as guardian and conservator.
18-205 Service.
18-206 Waiver of notice.
18-207 Proof of Service.
18-208 Notice – commencement of action.
18-209 Notice of hearing or trial.
18-210 Hearing procedure.
18-211 Burden of persuasion; General provisions.
18-212 Representation.
18-213 Preference for appointment of guardian and/or conservator; minor.
18-214 Preference for appointment of guardian and/or conservator; adult.
18-215 Affidavit of guardian and/or conservator.
18-216 Letters of guardian or conservator issued.
18-217 Oath – acceptance of appointment.
18-218 Effect of appointment – ward.
18-219 Legal effect of appointment.
18-220 Compensation of guardian or conservator.
18-221 Self-dealing by guardian or conservator.
18-222 Liability of guardians and conservators.
18-223 Tort liability of guardians or conservators.
18-224 Cause for termination; general.
18-225 Cause for termination; restoration of capacity.
18-226 Cause for termination; resignation or removal proceedings.
18-227 Appointment of successor guardian or conservator.
18-228 Powers of successor guardian or conservator.
18-229 Limit on application to terminate.

TITLE 18
ARTICLE 3
GUARDIANSHIP

18-301 Natural guardians; parental preference.
18-302 Petition for Appointment of Guardian.
18-303 Notification of Guardianship Powers.
18-304 Powers and duties of Guardian; general.
18-305 Powers and duties of Guardian; subject to approval of the Court.
18-306 Powers and duties of Guardian; other.
18-307 Powers and duties of guardian of a minor.
18-308 Qualification of guardian.
18-309 Appointment of guardian based on incompetency.
18-310 Appointment of guardian based on minority.
18-311 Appointment of temporary guardian.
18-312 Bond.
18-313 Reporting requirements – guardian.
18-314 Guardian's compensation.
18-315 Property delivered – penalty.
18-316 Testamentary appointment of guardian for incapacitated person.
18-317 Termination of guardianship for incapacitated person; liability for prior acts; obligation to account.
18-318 Testamentary appointment of guardian of minor.
18-319 Objection by minor of fourteen or older to testamentary appointment.

TITLE 18
ARTICLE 4
CONSERVATORSHIP

18-401 Petition for appointment of conservatorship.
18-402 Permissible court orders.
18-403 Notification of conservatorship powers.
18-404 Appointment of conservator.
18-405 Appointment of temporary and/or limited conservator.
18-406 Duties of conservator.
18-407 Powers of conservator without further Court order.
18-408 Powers of conservator subject to the approval of the Court.
18-409 Powers of ward.
18-410 Qualification of conservator.
18-411 Bond.
18-412 Amount of bond.
18-413 Bond – approval by Clerk.
18-414 Review by Clerk when inventory is filed.
18-415 Bond changed.
18-416 Obligees of bond – joint and several liability.
18-417 Order for delivery.
18-418 Inventory – reporting requirements.
18-419 Title to ward's property.
18-420 Conservator's right to possession.
18-421 Presumption of fraud.
18-422 Claims against ward, conservatorship, or conservator in that capacity.
18-423 Forms and verification of claims filed with Clerk.
18-424 Filing of claim required.
18-425 Compelling payment of claims.
18-426 Allowance by conservator.
18-427 Execution and levy prohibited.
18-428 Claims of conservators.
18-429 Claims not filed.
18-430 Liens not affected by failure to claim.
18-431 Pending actions.
18-432 General denial of claims.
18-433 Disallowance of claim by conservator.
18-434 Notice of disallowance and request for hearing.
18-435 Notice of disallowance; proof of service.
18-436 Notice of disallowance; claims barred after twenty days.
18-437 Request for hearing by claimant.
18-438 Applicability of Rules of Civil Procedure to hearing on claim.
18-439 Payment of claims in insolvent conservatorships.
18-440 Conservator may make gifts.
18-441 Assets exhausted.
18-442 Accounting to ward upon termination – notice.
18-443 Delivery of assets.
18-444 Discharge of conservator and release of bond.
18-445 Removal of conservator by Court.
18-446 Property delivered – penalty.

TITLE 1
COURT RULES
(As redesignated July 1, 1989.)

SUMMARY OF CONTENTS

SECTION	ARTICLE-PAGE
TITLE 1: COURT RULES	
1. TABLE OF REVISIONS	iv
2. TABLE OF CONTENTS	v
3. ARTICLE 1: PRELIMINARY PROVISIONS	1-1
4. ARTICLE 2: ESTABLISHMENT OF COURTS	2-1
5. ARTICLE 3: WINNEBAGO SUPREME COURT RULES OF APPELLATE PROCEDURE	3-1
6. ARTICLE 4: COUNSELORS AND PROFESSIONAL ATTORNEYS	4-1
7. ARTICLE 5: CONTEMPTS	5-1
8. ARTICLE 6: SELECTION OF JURORS	6-1
9. ARTICLE 7: JUDICIAL CONDUCT	7-1
10. ARTICLE 8: BONDS AND SURETIES	8-1
11. ARTICLE 9: MISCELLANEOUS	9-1
12. ARTICLE 10: OFFICE OF THE GENERAL COUNSEL	10-1
13. ARTICLE 11: TRADITIONAL WELLNESS COURT	11-1
TITLE 1A: WINNEBAGO RULES OF EVIDENCE	
1. TABLE OF REVISIONS	i
2. TABLE OF CONTENTS	ii
3. ARTICLE 1: GENERAL PROVISIONS	1-1
4. ARTICLE 2: JUDICIAL NOTICE	2-1
5. ARTICLE 3: PRESUMPTIONS	3-1
6. ARTICLE 4: RELEVANCY AND ITS LIMITS	4-1

7. ARTICLE 5: (RESERVED) 5-1

8. ARTICLE 6: WITNESSES 6-1

9. ARTICLE 7: OPINION AND EXPERT TESTIMONY 7-1

10. ARTICLE 8: HEARSAY 8-1

11. ARTICLE 9: AUTHENTICATION AND IDENTIFICATION 9-1

12. ARTICLE 10: CONTENTS OF WRITINGS, RECORDINGS AND PHOTOGRAPHS 10-1

13. ARTICLE 11: MISCELLANEOUS RULES 11-1

TITLE 1B: RULES OF CRIMINAL PROCEDURE

1. TABLE OF REVISIONS i

2. TABLE OF CONTENTS ii

3. ARTICLE 1: SCOPE, PURPOSES, AND CONSTRUCTION 1-1

4. ARTICLE 2: PRELIMINARY PROVISIONS 2-1

5. ARTICLE 3: PROCEEDINGS BEFORE TRIAL 3-1

6. ARTICLE 4: TRIAL 4-1

7. ARTICLE 5: JUDGMENT 5-1

8. ARTICLE 6: APPEAL 6-1

9. ARTICLE 7: MISCELLANEOUS PROVISIONS 7-1

TITLE 1C: TRIBAL CHILD SUPPORT GUIDELINES

1. TABLE OF REVISIONS i

2. TABLE OF CONTENTS ii

3. ARTICLE 1: TRIBAL CHILD SUPPORT GUIDELINES 1-1

TITLE 1D: BANISHMENT AND EXCLUSION CODE [REPEALED]

1. TABLE OF REVISIONS i

2. TABLE OF CONTENTS ii

TITLE 1
TABLE OF REVISIONS

The following table is included in this title as a guide for determining whether each article properly reflects the current version. This table will be updated with the revision of each article.

Through usage and supplementation, pages in bound titles can be inserted and removed when sections are revised on an article-by-article basis. This table should be placed before the Table of Contents in the title.

The "Article" column lists each article, and the "Section" column lists any corresponding sections that have been revised, in sequence. The "Revised Date" column reflects the effective date of the revision (e.g., "6/20/15"). If an article is not listed in the table, it has not been revised since the December 2015 Winnebago Tribal Code update and distribution.

Article	**Section**	**Revised Date**

TITLE 1
COURT RULES
(As redesignated July 1, 1989)

ARTICLE 1
PRELIMINARY PROVISIONS

1-100 Authorization.
1-101 Definitions.
1-102 Territorial jurisdiction.
1-103 Criminal jurisdiction.
1-104 Personal jurisdiction.
1-105 Jurisdiction over property.
1-106 General subject matter jurisdiction-limitations.
1-107 Civil jurisdiction.
1-108 Juvenile jurisdiction.
1-109 Law to be applied.
1-110 Exclusive jurisdiction.
1-111 Constitutional authority.
1-112 Name of Code.
1-113 Prior inconsistent ordinances repealed.
1-114 Amendment of Code.

TITLE 1
ARTICLE 2
ESTABLISHMENT OF COURTS
Judges and other Court Personnel

1-201 Trial Court established.
1-202 Court of appeals. Appeal of right.
1-203 Tribal Court judges.
1-204 Minimum qualifications of Judge of the Tribal Court.
1-204.1 Change in qualifications.
1-205 Manner of selection of Tribal Judges.
1-206 Term of office.
1-207 Compensation of judges.
1-208 Oath of office.
1-209 Duties and powers of judges.
1-210 Disqualifications of judges.
1-211 Removal of judges.
1-212 Decisions.
1-213 Records.
1-214 Files.
1-215 Motion day.
1-216 Court clerk establishment.
1-217 Clerk as department director.
1-218 Powers and duties.
1-219 Oath of clerks.
1-220 Seal.
1-221 Certification of true copies.
1-222 Clerk to serve Tribal and all other Courts.
1-223 Courts always open.
1-224 Trials and hearing—orders in chambers.
1-225 Clerk's office and orders of the clerk.
1-226 Notice of orders or judgments.
1-227 Books and records kept by the clerk and entries therein.
1-228 Stenographic report or transcript as evidence.
1-229 Judgment docket.
1-230 Execution docket.
1-231 Clerk may collect judgment and costs.
1-232 Clerk to issue writs and orders.
1-233 Clerk to file and preserve papers.
1-234 Each case to be kept separate.
1-235 Endorsements.
1-236 Entry on return of summons.
1-237 Material for record.
1-238 Memorializing record.
1-239 Clerk to keep Court records, books, and papers, statistical and other information.
1-240 Applicable to all Courts within Tribe's jurisdiction.
1-241 Bonds.
1-242 Probation and parole officers.
1-243 Creation of prosecutor's office.
1-244 Functions of the prosecutor(s).
1-245 Creation of defender's office.
1-246 Functions of the defender(s).

TITLE 1
ARTICLE 3
WINNEBAGO SUPREME COURT
RULES OF APPELLATE PROCEDURE
APPLICABILITY OF RULES

Rule 1 Scope of rules.
Rule 2 Suspension of rules.
Rule 3 Appeal as of right—how taken.
Rule 4 Appeal as of right—when taken.
Rule 5 Reserved for provisions relating to interlocutory appeals in civil actions.
Rule 6 Reserved for provisions relating to interlocutory appeals in criminal actions.
Rule 7 Bond for costs on appeal in civil cases.
Rule 8 Stay or injunction pending appeal.
Rule 9 Release in criminal cases.
Rule 10 The record on appeal.
Rule 11 Transmission of record.
Rule 12 Docketing the appeal; filing the record.
Rule 13 Reserved.
Rule 14 Reserved.
Rule 15 Reserved.
Rule 16 Reserved.
Rule 17 Reserved.
Rule 18 Reserved.
Rule 19 Reserved.
Rule 20 Reserved.
Rule 21 Writs.
Rule 22 Habeas corpus proceedings.
Rule 23 Custody of prisoners in habeas corpus proceedings.
Rule 24 Proceedings in forma pauperis.
Rule 25 Filing and service.
Rule 26 Computation and extension of time.
Rule 27 Motion.
Rule 28 Briefs.
Rule 29 Brief of an amicus curiae.
Rule 30 Appendix to the briefs.
Rule 31 Filing and service of briefs.
Rule 32 Form of briefs, the appendix, and other papers.
Rule 33 Prehearing conference.
Rule 34 Oral argument.
Rule 35 Determination of causes by the court en banc.
Rule 36 Entry of judgment.
Rule 37 Interest on judgments.
Rule 38 Damages for delay.
Rule 39 Costs.
Rule 40 Petition for rehearing.
Rule 41 Issuance of mandate.
Rule 42 Voluntary dismissal
Rule 43 Substitution of parties.
Rule 44 Cases involving constitutional or Indian civil rights act question where the Winnebago Tribe is not a party.

TITLE 1
ARTICLE 4
COUNSELORS AND PROFESSIONAL ATTORNEYS

1-400 Lay counsel.
1-401 Right to be represented by an attorney.
1-402 Eligibility for admission.
1-403 Procedure for admission.
1-404 Disbarment and discipline.
1-405 Standards of conduct and obligations for attorneys and lay counsel.
1-406 Oath of attorneys and lay counselors.

TITLE 1
ARTICLE 5
CONTEMPTS

1-500 Acts or failures to act which contribute contempt of Court.
1-501 Civil contempt.
1-502 Criminal contempt.
1-503 Contempt procedure.

TITLE 1
ARTICLE 6
SELECTION OF JURORS

1-600 Eligibility for jury selection.
1-601 Jury lists.
1-602 Jury panel selection procedures.
1-603 Power to excuse jurors.
1-604 Compensation to jurors.

TITLE 1
ARTICLE 7
JUDICIAL CONDUCT

1-700 Adoption of Code of Judicial Conduct.
1-701 Canon 1.
1-702 Canon 2.
1-703 Canon 3.
1-704 Canon 4.
1-705 Canon 5.
1-706 Canon 6.
1-707 Canon 7.
1-708 Compliance with Code of Judicial Conduct.

TITLE 1
ARTICLE 8
BONDS AND SURETIES

1-800 Justification of surety.
1-801 Qualifications of surety.
1-802 Real estate mortgage as bond.
1-803 Valuation of real estate.
1-804 False valuation—penalty.
1-805 Action by Tribe or Tribal department—no bond required.
1-806 Appearance bond—enforcement.

TITLE 1
ARTICLE 9
MISCELLANEOUS

1-900 Deputy may perform official duties.
1-901 Affirmation.
1-902 Publication in "patent insides."
1-903 Action on official bond.
1-904 May be several actions on same security.
1-905 Immaterial errors to be disregarded.
1-906 Payments into Court for minors and incompetents.
1-907 Conserving moneys obtained for minors or incompetent persons.
1-908 Sharing of judicial officers.
1-909 Sharing of other judicial personnel.
1-910 Sharing of material resources.
1-911 Sharing of financial resources.
1-912 Repealed by TCR 93-85.
1-913 Copies of laws.
1-914 Cooperation by federal employees.
1-915 Effect of prior decisions of the Court.
1-916 Judicial review of legislative and executive actions.
1-917 Action when no procedure provided.
1-918 Adoption by reference not a waiver of sovereign power of the Tribe.
1-919 Actions by or against Tribe or its officers.
1-920 Actions by or against Tribe or its officers or employees.
1-921 Principles of construction.

TITLE 1
ARTICLE 10
OFFICE OF THE GENERAL COUNSEL

1-1000 Office established.
1-1001 Duties.
1-1002 Delegation of duties.
1-1003 Engagement of outside legal counsel.
1-1004 Title of Attorney General.

TITLE 1
ARTICLE 11
TRADITIONAL WELLNESS COURT
(Amended August 29, 2011)

1-1101 Construction.
1-1102 Purpose.
1-1103 Traditional Wellness Court established.
1-1104 Personal and subject matter jurisdiction.
1-1105 Appointment of Wellness Court Panel Members.
1-1106 Referral process.
1-1107 Reports to Tribal Court.
1-1108 Nature of cases to be decided by the Traditional Wellness Court.
1-1109 Powers and duties of Traditional Wellness Court Panel Members.
1-1110 Powers and duties of the Traditional Wellness Court Coordinator.
1-1111 Intake process.
1-1112 Procedures.
1-1113 Records and confidentiality.
1-1114 Completion of Proceedings.
1-1115 Destruction of Records.
1-1116 Appeals.

TITLE 1
COURT RULES

(As redesignated July 1, 1989.)

ARTICLE 1
PRELIMINARY PROVISIONS

1-100 Authorization.
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1-104 Personal jurisdiction.
1-105 Jurisdiction over property.
1-106 General subject matter jurisdiction-limitations.
1-107 Civil jurisdiction.
1-108 Juvenile jurisdiction.
1-109 Law to be applied.
1-110 Exclusive jurisdiction.
1-111 Constitutional authority.
1-112 Name of Code.
1-113 Prior inconsistent ordinances repealed.
1-114 Amendment of Code.

PREAMBLE

This Code of laws for the Winnebago Tribe of Nebraska of the Winnebago Indian Reservation is established for the purpose of strengthening Tribal self-government and providing for the protection of people and property on the reservation. Adoption of this Code is an exercise of inherent sovereignty of the Winnebago Tribe of Nebraska, and is undertaken by the Winnebago Tribal Council pursuant to its constitutional authority so to do. [TCR 86-79]

1-100 Authorization. There is hereby established, ordained and activated, pursuant to the Constitution of the Tribe, the judicial branch of the government of the Tribe, the Tribal Court and an appeals Court known as the Winnebago Supreme Court. [TCR 96-22]

1-101 Definitions. The following words have the meanings given below when used in this Act, unless a different meaning is obvious from the context:

1. "Appeals Court" shall mean the Court of last resort to which appeals may be taken from the Tribal Court. The judicial decisions of the Court of Appeals are final and not subject to further appeal. The Court of Appeals shall be the Winnebago Supreme Court.
2. "Clerk" shall mean the clerk of the Court.
3. "Code" shall mean the statutory laws of the Tribe.
4. "Constitution" shall mean the Constitution of the Tribe.
5. "He," "him," and "his" shall mean the masculine, feminine or neuter form as necessary for the phrase to have meaning.
6. "Tribal Court" shall mean the general Tribal Court operating within the jurisdiction of the Tribe.
7. "Jurisdiction" shall mean the Indian Country within the territorial jurisdiction of the Tribe.
8. "Tribe" shall mean the Winnebago Tribe of Nebraska unless the context clearly indicates otherwise.
9. "Reservation" shall mean all the territory within the exterior boundaries of the Winnebago Indian Reservation (including Flowers Island and other Tribal land located east of the Missouri River) as set forth in the Winnebago Treaty of March 8, 1865 (14 Stat. 671) and the twenty (20) sections included in the strip purchased in Nebraska for Wisconsin Winnebagos (18 Stat. 170), June 22, 1874 and such lands as may be added thereto by Congress or the Tribe or reaffirmation of the title

of lands through the Courts to the Tribe, except as otherwise provided by law. This definition of reservation includes all rights-of-way, waterways, streams, lakes, highways, railroad rights-of-way, mineral rights, etc.

10. "Winnebago Tribal Court" shall mean the Tribal Court and the Winnebago Supreme Court and such other inferior courts as the Tribal Council may from time to time establish. [TCR 86-79, 87-102, 91-63, 93-62, 96-22]

1-102 Territorial jurisdiction.

1. The jurisdiction of the Courts of the Winnebago Tribe of Nebraska shall extend to the territory within the exterior boundaries of the Winnebago Indian Reservation (including Flowers Island and other Tribal land located east of the Missouri River) as set forth in the Winnebago Treaty of March 8, 1865 (14 Stat. 671) and the twenty (20) sections included in the strip purchased in Nebraska for Wisconsin Winnebagos (18 Stat. 170), June 22, 1874 and such lands as may be added thereto by Congress or the Tribe or reaffirmation of the title of lands through the Courts to the Tribe, except as otherwise provided by law. This definition of territorial jurisdiction includes all rights-of-way, waterways, streams, lakes, highways, railroad rights-of-way, mineral rights, etc.
2. The Winnebago Tribal Courts shall have jurisdiction over any Indian Child Welfare Act proceeding or other juvenile matter falling within the jurisdiction conferred on the Tribal Courts by Article IV, Section 1(R) of the Winnebago Constitution and Bylaws (amended May 28, 1981) and /or contemplated by the Indian Child Welfare Act of 1978, 25 U.S.C. Section 1901, et. seq., as may be amended from time to time, or by successor statute, whether arising on or off the Winnebago Indian Reservation. [TCR 96-22]

1-103 Criminal jurisdiction. The Courts shall have original jurisdiction over all criminal offenses enumerated and defined in any statute adopted by the Tribe insofar as not prohibited by federal law. The Court of Appeals in all criminal cases shall be the Winnebago Supreme Court. [TCR 96-22]

1-104 Personal jurisdiction.

1. As used in these jurisdictional provisions, the word "person" shall include any individual, firm, company association, corporation or other entity.
2. Subject to any limitations expressly stated elsewhere in this Code, the Courts of the Tribe shall have jurisdiction over the following persons:
    a. Any person who transacts, conducts, or performs any business or activity within the reservation, either in person or by an agent or representative, for any civil cause of action or contract or in quasi contract or by promissory estoppel or alleging fraud.
    b. Any person who owns, uses, or possesses any property within the reservation, for any civil cause of action prohibited by this Code or other statute of the Tribe arising from such ownership use or protection.
    c. Any person who commits a tortious act on or off the reservation or engages in tortious conduct within the reservation, either in person or by agent or representative, causing harm within the reservation for any civil cause of action arising from such act or conduct.
    d. Any Indian who commits a criminal offense prohibited by this Code or other statute of the Tribe, by his/her own conduct or the conduct of another for which he/she is legally accountable, if:
        i. The conduct occurs either wholly or partly within the reservation; or
        ii. The conduct which occurs outside the reservation constitutes an attempt or conspiracy to commit an offense within the reservation; or

iii. The conduct which occurs within the reservation constitutes an attempt or conspiracy to commit in another jurisdiction an offense prohibited by this Code or other statute of the Tribe and such other jurisdiction.

3. Any person for whom the Tribal Courts may constitutionally exercise jurisdiction.
4. None of the foregoing bases of jurisdiction is exclusive, and jurisdiction over a person may be established upon any one or more of them as applicable. [TCR 96-22]

1-105 Jurisdiction over property. Subject to any contrary provisions, exceptions or limitations contained in either federal laws and regulations, the Tribal Constitution, or as expressly stated elsewhere in this Code, the Winnebago Tribal Court System shall have jurisdiction over any real or personal property located on the reservation to determine the ownership thereof or rights therein or to determine the application of such property to the satisfaction of a claim for which the owner of the property must be liable. [TCR 96-22]

1-106 General subject matter jurisdiction—limitations.

1. The Winnebago Tribal Court System shall have such subject matter jurisdiction as is expressly conferred by Article IV 1(i) and 1(q), Winnebago Constitution and By-laws (amended May 28, 1981) to wit:
   a. Any and all Indian Child Welfare Act proceedings defined at 25 U.S.C. Section 1901, et. seq., or successor statute, without regard to the child's residence or domicile or the location of any incidents giving rise to the proceedings.
   b. Civil disputes and civil causes of action of any kind whatsoever with the following exceptions and limitations:
      i. The Winnebago Tribal Court shall have jurisdiction over probate proceedings to the extent permitted by federal law over all of the real and personal property located within the boundaries of the jurisdiction of the Court at the time of death. [TCR 86-79, 96-22]

1-107 Civil jurisdiction. The Winnebago Tribal Courts shall have general civil jurisdiction over all civil actions arising under the Constitution, laws, or treaties of the Tribe, including the Tribal common law, over all general civil claims which arise within the Tribal jurisdiction, and over all transitory claims in which the defendant may be served within the Tribal jurisdiction. Personal jurisdiction shall exist over all defendants served within territorial jurisdiction of the Courts, or served anywhere in cases arising within the territorial jurisdiction of the Tribe, and all persons consenting to such jurisdiction. The act of entry within the territorial jurisdiction of the Courts shall be considered consent to the jurisdiction of the Courts with respect to any civil action arising out of such entry. The act of entry upon the territorial jurisdiction by an extraterritorial seller, merchant, or their agent(s) shall be considered consent by the seller or merchant or their agent(s) to the jurisdiction of the Courts for any dispute arising out of any sale or commercial transaction regardless of where the sale or transaction was entered into or took place. The Court of Appeals in all civil cases shall be the Winnebago Supreme Court. [TCR 96-22]

1-108 Juvenile jurisdiction. The juvenile division of the Tribal Court shall have exclusive original jurisdiction in all proceedings and matters affecting dependent or neglected children, children in need of care, children in need of supervision, or children under eighteen years of age, or any juvenile offenders when such children are found within the jurisdiction of the Court, or when jurisdiction is transferred to the Court pursuant to law. The Court of Appeals in all juvenile matters shall be the Winnebago Supreme Court. [TCR 96-22]

1-109 Law to be applied. The Courts shall apply the Tribal Constitution, and the provisions of all statutory law hereto or hereafter adopted by the Tribe. In matters not covered by Tribal statute, the Court

shall apply traditional Tribal customs and usages, which shall be called the common law. When in doubt as to the Tribal common law, the Court may request the advice of counselors and Tribal elders familiar with it. In any dispute not covered by the Tribal Constitution, Tribal statute, or Tribal common law, the Court may apply any laws of the United States or any states therein, and any regulation of the Department of Interior which may be of general or specific applicability. Upon this Code becoming effective, neither Part II of Title 25 of the Code of Federal Regulations, except those sections thereof which are effective when the Tribe receives certain funding from the Bureau of Indian Affairs, nor state law shall be binding upon the Court unless specifically incorporated into Tribal law by Tribal statute or by decision of the Tribal Courts adopting some federal or state law as Tribal common law. [TCR 96-22]

1-110 Exclusive jurisdiction.

1. The Courts of the Winnebago Tribe of Nebraska shall have exclusive original jurisdiction in all matters in which the Tribe or its officers or employees are parties in their official capacities, except as otherwise limited by federal law.
2. Nothing contained in the preceding paragraph or elsewhere in this Code shall be constructed as a waiver of the sovereign immunity of the Tribe or its officers or enterprises. [TCR 96-22]

1-111 Constitutional authority. This Code is adopted pursuant to the authority vested in the Tribal Council under Article IV, Section 1(i) and 1(q) of the Constitution of the Winnebago Tribe of Nebraska (amended May 28, 1981). [TCR 86-79]

1-112 Name of Code. This Code shall be known as the Code of the Winnebago Tribe of Nebraska and may be referred to as "the Code." [TCR 86-79, 93-62]

1-113 Prior inconsistent ordinances repealed. Any and all ordinances and resolutions of the Tribal Council which conflict in any way with the provisions of this Code are hereby repealed to the extent of their inconsistency herewith. [TCR 86-79]

1-114 Amendment of Code. Code parts shall be adopted, amended or repealed by resolution of the Tribal Council. Each resolution shall be numbered chronologically, the first number to be the final two numbers of the fiscal year in which the resolution was adopted, and the last numbers to reflect the resolution's place in the sequence of numbering of all resolutions adopted in that fiscal year. The number of the resolution adopting, amending or repealing each Code section shall appear in brackets following each section. All changes to the Code which are technical and intended to have no substantive effect, including changes in numbers or names of Code titles, article, sections or subparts thereof shall become effective when said Code parts are issued to the Tribal Court or to the Tribal commission, committee, department or program having oversight in the matters treated in such parts of the body of Tribal law. [TCR 86-79, 93-85]

TITLE 1
ARTICLE 2
ESTABLISHMENT OF COURTS
Judges and other Court Personnel

1-201 Trial Court established.
1-202 Court of appeals. Appeal of right.
1-203 Tribal Court judges.
1-204 Minimum qualifications of Judge of the Tribal Court.
1-204.1 Change in qualifications.
1-205 Manner of selection of Tribal Judges.
1-206 Term of office.
1-207 Compensation of judges.
1-208 Oath of office.
1-209 Duties and powers of judges.
1-210 Disqualifications of judges.
1-211 Removal of judges.
1-212 Decisions.
1-213 Records.
1-214 Files.
1-215 Motion day.
1-216 Court clerk establishment.
1-217 Clerk as department director.
1-218 Powers and duties.
1-219 Oath of clerks.
1-220 Seal.
1-221 Certification of true copies.
1-222 Clerk to serve Tribal and all other Courts.
1-223 Courts always open.
1-224 Trials and hearing—orders in chambers.
1-225 Clerk's office and orders of the clerk.
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1-231 Clerk may collect judgment and costs.
1-232 Clerk to issue writs and orders.
1-233 Clerk to file and preserve papers.
1-234 Each case to be kept separate.
1-235 Endorsements.
1-236 Entry on return of summons.
1-237 Material for record.
1-238 Memorializing record.
1-239 Clerk to keep Court records, books, and papers, statistical and other information.
1-240 Applicable to all Courts within Tribe's jurisdiction.
1-241 Bonds.
1-242 Probation and parole officers.
1-243 Creation of prosecutor's office.
1-244 Functions of the prosecutor(s).
1-245 Creation of defender's office.
1-246 Functions of the defender(s).

1-201 Trial Court established.

1. Pursuant to Article X, Winnebago Constitution and Bylaws (amended May 28, 1981), there is hereby established the Winnebago Tribal Court, the trial level court for the Winnebago Tribe of Nebraska.
2. There is hereby established as part of the Tribal Court, a Juvenile Court division, which may be referred to as the Tribal Juvenile Court. The Juvenile Court division shall handle all matters as set forth in the Juvenile Code. [TCR 96-22]

1-202 Court of appeals. Appeal of Right.

1. Pursuant to Article X, Winnebago Constitution and Bylaws (amended May 28, 1981), there is hereby established the Winnebago Supreme Court, the appellate court for the Winnebago Tribe of Nebraska. Appeal to the Winnebago Supreme Court shall be of right.
2. The Winnebago Supreme Court of Appeals shall be the appellate court for the Winnebago Tribe of Nebraska, and shall have appellate jurisdiction over all proceedings before the Winnebago Tribal Court. The Winnebago Supreme Court shall be the highest and final forum for the

adjudication or resolution of all matters within the jurisdiction of the Winnebago Tribe of Nebraska.

3. Writs and orders. The Winnebago Supreme Court shall have the power to issue any writs or orders necessary and proper to the complete exercise of its jurisdiction, or to cause a court to act where such court unlawfully fails to act within its jurisdiction.
4. The Winnebago Supreme Court shall consist of a Chief Judge, who shall hold the title of Chief Justice of the Winnebago Supreme Court, and two associate judges, who shall hold the title of Associate Justice of the Winnebago Supreme Court. Any two justices shall constitute a quorum. Winnebago Supreme Court Justices shall meet the minimum qualifications established for Tribal Court judges under Section 1-204 of this Code. Additionally, Justices of the Winnebago Supreme Court shall be governed by the following rules:
    a. The trial judge hearing the case at bar shall not sit on the Winnebago Supreme Court.
    b. No person shall be qualified to sit on the Winnebago Supreme Court in any case wherein he/she has direct interest or wherein any relative by marriage or blood, within the first three degrees, is a party or has direct pecuniary interest.
    c. In any case wherein a judge of the Winnebago Supreme Court is unable to hear a case, due to conflict of interest, illness or other reason, the Tribal Council shall appoint a Judge Pro-Tempore who meets the minimum qualifications established for Tribal Court judges under Section 1.204 of this Code. [TCR 96-22]

1-203 Tribal Court judges. The Tribal Court shall consist of the Chief Judge, and such Tribal associate judges, special judges and magistrates as may be appointed according to Tribal law. [TCR 93-85, 96-22]

1-204 Minimum qualifications of Judge of the Tribal Court. A judge shall be either:

1. An attorney, or
2. An Indian graduate of an American Bar Association approved law school, and
    a. Have demonstrated moral integrity and fairness in his/her business, public and private life.
    b. Have never been convicted of a felony, whether or not actually imprisoned, and have not been convicted of any offense, except traffic offenses, for a period of two years preceding his/her appointment. The two-year period shall begin to run from the date the person was unconditionally released from supervision of any sort as a result of a conviction.
    c. Have regularly abstained from the excessive use of alcohol and any use whatsoever of illegal drugs or psychotoxic chemical solvents.
    d. Be not less than 25 years of age.
    e. Not be a member of the Tribal Council, or the holder of any other elected Tribal office of this Tribe, provided that a candidate who is a member of the Tribal Council, or the holder of some other elective Tribal office, may be confirmed as a judge subject to his/her resignation. Upon resignation from his/her office, he/she may be sworn in as and assume the duties of judicial office.

C. Repealed. [TCR 96-22]

1-204.1 Change in qualifications. A change in qualifications for any particular judge position shall be applied to any Tribal Judge in office at the time the change in qualifications becomes effective, but shall not apply to that judge as to any other person after the expiration of such judge's term. [TCR 86-79, 93-85]

1-205 Manner of selection of Tribal Judges. Judges shall be appointed by the Tribal Council in the following manner:

1. Within ten days after a vacancy occurs, the Tribal personnel department shall cause a notice of the vacancy stating minimum qualifications, salary, and any other pertinent information to be published once in the Tribal newspaper and once each week for two consecutive weeks in a newspaper of general circulation in the Tribal jurisdiction. Copies shall be posted at the Tribal office, the nearest agency of the Bureau of Indian Affairs, the Winnebago Housing Authority office, and such other places as the Tribal Council shall direct. The notice shall direct that inquiries, nominations and applications be directed to the Winnebago Tribal personnel department who shall keep a permanent record of responses to such notices. The personnel department shall then interview and nominate the individuals who they feel are best qualified.
2. The Tribal Council shall then review the qualifications of the nominees and any other person meeting qualifications it wishes to consider. The Tribal Council shall then appoint the individual deemed best qualified.
3. If the nominee for judicial office is confirmed by the Tribal Council, the nominee shall be sworn into office by the Chief Justice, or the next ranking available justice of the Winnebago Supreme Court. The Chief Justice of the Winnebago Supreme Court shall be sworn in by the Chairman of the Winnebago Tribal Council.
4. If no person is confirmed, the Tribal Human Resources Department shall either republish the notice and establish a new list of eligible candidates, or will forward for reconsideration to the Tribal Council the candidates on the list gathered from the previous notice. The process shall then be repeated.
5. Upon the expiration of a judicial term of office, the judicial officer is entitled, upon request filed with the secretary of the Tribal Council not less than sixty days prior to the expiration of his/her term, to be considered for confirmation to a new term at the next meeting of the Tribal Council at which a quorum is present. If the Tribal Council, a quorum being present, does not confirm the outgoing officer, they shall so declare and direct the Tribal personnel office to begin the selection process. The outgoing judicial officer's term shall expire upon the date the Tribal Council deems the position vacant. [TCR 96-22]

1-206 Term of office.

1. The Chief Judge of the Winnebago Supreme Court shall serve a six year term of office beginning from the date of his/her confirmation and until his/her successor takes office, unless removed for a cause, or by death or resignation.
2. The associate judge of the Winnebago Tribal Court System shall serve a two year term of office beginning from the date of his/her confirmation and until his/her successor takes office, unless removed for cause or by death or resignation. [TCR 96-22]

1-207 Compensation of judges. The compensation of Tribal judges, including the Chief Judge and associate judges, shall be set by the Tribal Council at the time of their appointment. No judge's salary shall be reduced by the Tribal Council during his/her term in office except as provided in Article X, Section 1, Winnebago Constitution and Bylaws (amended May 28, 1981). [TCR 86-79, 96-22]

1-208 Oath of Office. Before assuming office, each judge, associate judge, special judge and magistrate shall take an oath to support and protect the Constitution of the Tribe and to administer justice in all causes coming before him/her with integrity and fairness, without regard to the persons before him/her, to be administered by the Chief Justice or the next ranking available justice of the Winnebago Supreme Court as soon after confirmation as may be practical, or by the Chairman of the Tribal Council. [TCR 96-22]

1-209 Duties and powers of judges. All judges of the Tribal Court, and special judges in cases within their authority, shall have the duty and power to conduct all Court proceedings, and issue all orders and papers incident thereto, in order to administer justice in all matters within the jurisdiction of the Court. In doing so the Court shall:

1. Be responsible for creating and maintaining rules of the Court, not in conflict with the Tribal Code or rules of the Tribal Court regulating conduct in the Tribal Court, for the orderly and efficient administration of justice. Such rules must be filed in the office of the Tribal secretary and the Tribal Court clerk before becoming effective.
2. Hold Court regularly at a designated time and place.
3. Have the power to administer oaths, conduct hearings, and otherwise undertake all duties and exercise all authority of a judicial officer under the law.
4. Hear and decide all cases properly brought before the Court.
5. Enter all appropriate orders and judgments.
6. Issue all appropriate warrants and subpoenas.
7. Keep all Court and other records as may be required.
8. Perform the duties of the clerk in his/her absence.
9. Subject to the confirmation of the Tribal Council, appoint such magistrates as may be necessary for the convenient functioning of the Court. These magistrates shall have the authority to issue arrest and search warrants for the protection of children, emergency custody orders in children's cases, temporary commitments of persons accused of offenses, to conduct arraignments in criminal or juvenile delinquency cases, and to act on such ex parte, summary or other matters as may be determined by rule of the Tribal Court. Magistrates shall meet the minimum qualifications for the judges of the Tribal Court.
10. Unless a coroner is appointed in accordance with the provisions of the Tribal Code, any judge designated by the Chief Judge shall have the authority to perform duties of the coroner. [TCR 96-22]

1-210 Disqualifications of judges.

1. No judge shall hear any cases when he/she has a direct financial, personal, or other interest in the outcome of such cases or is related by blood or marriage to one or both of the parties as: husband; wife; son; daughter; mother; father; brother; sister; grandmother; grandfather; or any other legal dependent. A judge should attempt to prevent even the appearance of partiality or impropriety.
2. Either party of interest in such case or the judge may raise the question of conflict of interest. Upon decision by the judge concerned, or the Chief Judge or highest ranking judge, that disqualification is appropriate, another judge shall be assigned to hear that matter before the Court.
3. Any judge otherwise disqualified because he/she is related to one or more of the parties in one of the relationships enumerated in subsection (1) of this Section, may hear a case if all parties are informed of the blood or marriage relationship on the record in open Court and of their right to have a different judge hear the case, and consent to further action by that judge in the case in open Court upon the record, or in writing filed in the record, in spite of the conflict in interest. [TCR 96-22]

1-211 Removal of judges. Pursuant to Article X of the Constitution and Bylaws of the Winnebago Tribe of Nebraska as amended May 28, 1981, a judge may be removed for just cause by a petition of forty (40) percent of the voters, voting in the last Tribal election, filed with the Bureau of Indian Affairs superintendent, who shall call an election for removal. The removal vote must be by a majority of those voting. Before the removal election is called, the judge will be provided a hearing to answer any charges.

The term "cause" shall include any reason sufficient for disbarment of an attorney from the bar of the Tribal Court or state Court or a violation of the Canons of Judicial Ethic promulgated by the American Bar Association. [TCR 96-22]

1-212 Decisions.

1. Each decision of a Court within the Winnebago Tribal Court System at a trial shall be recorded on a form approved by the Tribal Court for such purpose, or embody in writing, findings of fact or conclusions of law containing all the information required by the approved form. The form shall provide for recording the date of the decision, the case number, the names of all parties, the substance of the complaint, the relevant facts found by the Court to be true, the Court's decision, and the conclusion of law supporting the Court's decision.
2 The decision form or the written findings of fact and conclusions of law shall be placed in the case file as an official document of the case. [TCR 96-22]

1-213 Records. The Courts of the Winnebago Tribal Court System shall be Courts of record. To preserve such records:

1. In all Court proceedings, the Court reporter, which may be the clerk in the absence of an official Court reporter, shall record proceedings of the Court by electronic or stenographic means. The recording shall be identified by case number and kept for five years for use in appeals or collateral proceedings in which events of the hearing are in issue. At the close of each hearing, or as otherwise specified, the reporter shall cause a transcript to be made of the recording upon request of any party or the Court as a permanent part of the case record. Court reporters may be licensed by the Tribal Court, and shall be allowed such fees from the parties for their services as shall be set by rule of the Tribal Court.
2. To preserve the integrity of the electronic record, the reporter shall store the recording in a safe place and release it only to the relevant Court or pursuant to an order of a Tribal judge or justice.
3. The clerk shall keep a file bearing the case name and number and every written document filed in the case.
4. All Court records shall be public records except as otherwise provided by law.
5. After five years, Court records except judgments, appearance, and other dockets may be reproduced on computer tape or disk, microfilm or microfiche or similar space saving record keeping methods, provided that at least one hard copy including microfilm or microfiche, of electronically stored data shall be kept at all times.
6. The Winnebago Tribal Court System shall provide for publication in books or similar reporters all of its decisions and opinions in cases before it, which would be useful to the bar of Court and the public. [TCR 96-22]

1-214 Files.

1. Except as otherwise provided by law, such as in juvenile cases, Court files on a particular case are generally open to the public. Any person may inspect the records of a case and obtain copies of documents contained therein during normal business hours.
2. Any person desiring to inspect the records of a case or obtain copies thereof may inspect such files only during the ordinary working hours of the clerk, or judge, and in their presence to insure the integrity of Court records. Under no circumstances shall anyone, except a judge or a licensed advocate, attorney or the clerk taking a file to the judge in his/her chambers or a Courtroom, take a file from the clerk's office.
3. A copy of any document contained in such a file may be obtained from the clerk by any person for a reasonable copy fee, to be set by the rule of the Tribal Court. The clerk is hereby authorized

to certify under the seal of his/her office that such copies are accurate reproductions of those documents on file in his/her office. The Tribal Court by rule may provide for such certification. [TCR 96-22]

1-215 Motion day. Unless conditions make it impractical, the Winnebago Tribal Court System shall establish regular times and places, at intervals sufficiently frequent for the prompt dispatch of business, at which motions requiring notice and hearing may be heard and disposed of; but the judge at any time or place, and on such notice, if any, as he/she considers reasonable, may make orders for the advancement, conduct, and hearing of actions, or, the Court may make provision by rule or order for the submission and determination of motions without oral hearing upon brief written statements of reasons in support and opposition. [TCR 96-22]

1-216 Court clerk establishment. There is hereby established a Court clerk's office to be administered by one (1) Court clerk and such deputy Court clerks as may be necessary. The Court clerk shall be approved by the Chief Judge and deputy Court clerks shall be approved by the Court clerk.

1-217 Clerk as department director. The chief Court clerk is a supervisory administrative position of the judicial branch of the government of the Tribe with the same rank as department director. The chief Court clerk shall serve as the Court administrator and shall be charged in the preparation of Court budgets, the acquisition of necessary supplies, the maintenance and upkeep of the Court's law library, the custody, upkeep and maintenance of the records, papers, effects, and property of the Court and such other matters as shall be assigned to the chief Court clerk by law or Court rule. [TCR 86-79]

1-218 Powers and duties. The Court clerk shall have the following powers and duties:

1. To undertake all duties and functions otherwise authorized by law, or necessary and proper to exercise of a duty or function authorized by law.
2. Subject to the approval of the Winnebago Supreme Court, to supervise and direct the hiring, firing and work of all deputy Court clerks and other employees in his/her office.
3. To collect all fines, fees, and costs authorized or required by law to be paid to the Courts, to receipt therefore and to deliver them to deposit in the Court fund.
4. To accept, when ordered by the Court, monies for the payment of civil judgments and to pay same by check to the party entitled to them. For the purpose of taking such action, the clerk is authorized to maintain a bank checking account subject to the oversight of the Tribal Court and to deposit and withdraw funds therefrom. This account shall be audited at least once each year by the Tribal Finance Department or an independent certified public accountant, and the clerk shall give a fidelity or performance bond to guarantee the funds deposited therein in such amount as the Tribal Court shall direct.
5. To administer oaths, issue summons and subpoenas, certify a true copy of Court records, and to accurately keep each and every record of the Winnebago Tribal Court System.
6. To provide a record in the absence of a Court reporter to accurately and completely record all proceedings and hearings of the Courts. If a Court reporter is available, the Court reporter shall have the authority to administer oaths and undertake such other Court functions as shall be provided by law or Court rule.
7. To provide stenographic and clerical services to the Court and prosecuting attorney when requested.
8. To act as a librarian, and to keep and maintain the Court's law library.
9. To undertake all duties assigned or delegated to the clerk's office by Tribal law or Court rule. [TCR 96-22]

1-219 Oath of clerks.

1. Every clerk shall take the following oath upon assuming office:

   I, _____having been appointed clerk of the Winnebago Tribal Court System, do solemnly affirm that I will truly, faithfully, honestly, and impartially discharge all of the duties of my office to the best of my ability and understanding.

2. Such oaths shall be administered by a judge of the Winnebago Supreme Court. [TCR 96-22]

1-220 Seal. The Court clerk is authorized to have and use a seal which shall be circular in form and contain the words, "Official Seal" or the official Tribal emblem in its center. The seal shall be impressed upon all warrants, subpoenas, summons, certified copies of records, judgments, orders, decrees, and similar documents, as evidence of their authenticity. [TCR 86-79]

1-221 Certification of true copies. The Court clerk is authorized to certify that a copy of any record in his/her office is a true, accurate copy of the record on file by signed, stamp or writing placed on such copy, sealed with the seal of the Court clerk's office and in substantially the following form:

CERTIFICATE OF TRUE COPY

I hereby certify that the above and foregoing instrument is a true, accurate and exact copy of the original of same as it remains of record on file in my office.

Clerk of Court _____

Date _____

Certified copies of records shall be admissible as evidence without further authentication in all judicial and administrative proceedings of this Tribe. [TCR 86-79]

1-222 Clerk to serve Tribal and all other Courts. Until such time as the Winnebago Supreme Court determines that separate clerks are necessary to efficiently administer the business of the Courts and funding is available, the Court clerk shall serve as clerk of the Tribal Courts as well as clerk for all other Courts under the Winnebago Tribe's jurisdiction. [TCR 86-79, 96-22]

1-223 Courts always open.

1-224 Trials and hearings—orders in chambers. All trials upon the merits, except as specifically provided by law and in children's cases, shall be conducted in open Court insofar as convenient in a regular Courtroom. All other acts or proceedings may be done or conducted by a judge in chambers, without the attendance of the clerk or to his/her Court officials and in any place either within or without the Tribal jurisdiction; but no hearing, other than ex parte, shall be conducted outside the Tribal jurisdiction without consent of all parties affected thereby, except when determined by the Court to be necessary or expedient in children's cases arising under the Indian Child Welfare Act of 1978, or when the Tribe has entered into agreement with another government for the sharing of judicial officers and Courtroom space in which case the Court may sit in any place authorized by such agreement. [TCR 86-79]

1-225 Clerk's office and orders of the clerk. The clerk's office with the clerk or deputy in attendance shall be open during business hours on all days except Saturdays, Sundays and legal holidays, but the Court may provide by rule or order that its clerk's office shall be open for specified hours on Saturdays or particular legal holidays other than New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Thanksgiving, and Christmas. All motions and applications in the clerk's office for issuing mesne process, for issuing final process, to enforce and execute judgments, for entering defaults or judgments by default, and for other proceedings which do not require allowance or order of the Court are grantable of course by the clerk, unless the Civil Procedure Act requires previous approval by the Court, but his/her action may be suspended or altered or rescinded by the Court upon cause shown.

1-226 Notice of orders or judgments. Immediately upon the entry of an order or judgment, the clerk shall serve a notice of the entry by mail upon each party or their attorney who is not in default for failure to appear, and shall make a note in the docket of the mailing. Such mailing is sufficient notice for all purposes for which notice of the entry of an order is required by law, but any party may in addition serve a notice of such entry in the manner provided in the Winnebago Rules of Civil Procedure for the service of papers. Lack of notice of the entry by the clerk does not affect the time allowed, except as permitted in the Winnebago Rules of Civil Procedure. [TCR 86-79]

1-227 Books and records kept by the clerk and entries therein.

1. The clerk shall keep a book known as the "Civil Docket" of such form and style as may be prescribed by the judges of the Tribal Court, and shall enter therein each civil action. Actions shall be assigned consecutive file numbers. The file number of each action shall be noted on the folio of the docket whereupon the first entry of the action is made. All papers filed with the clerk, all process issued and returns made thereon, all appearances, orders, verdicts, and judgments shall be entered chronologically in the civil docket on the folio assigned to the action and shall be marked with its file number. These entries shall be brief but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the Court and of the returns showing execution of process. The entry of an order or judgment shall show the date the entry is made. When in an action trial by jury has been properly demanded or ordered, the clerk shall enter the word "jury" on the folio assigned to that action.
2. In like fashion, the clerk shall keep suitable dockets, indices, calendars, and judgment records for the criminal, juvenile and small claims dockets of the Tribal Court and the appeals and original action docket of the Winnebago Supreme Court.
3. The clerk shall also keep such other books and records as may be required from time to time by the law or Tribal Court. [TCR 96-22]

1-228 Stenographic report or transcript as evidence.

1. Whenever the testimony of a witness at a trial or hearing which was stenographically reported is admissible in evidence at a later trial, it may be proved by the transcript thereof maintained in the custody of the Court clerk with the records of the trial, or by some other person duly authorized to administer oaths, who has prepared or caused to be prepared under his/her direction a transcript of the recording.
2. Whenever the testimony of a witness at a trial or hearing which was electronically taped is admissible in evidence at a later trial, it may be proved by the tape recording thereof maintained in the custody of the Court clerk with the records of the trial, or by some other person duly authorized to administer oaths, who has prepared or caused to be prepared under his/her direction a transcript of the recording. [TCR 86-79]

1-229 Judgment docket. The judgment docket shall be kept in the form of an index in which the name of each person against whom judgment is rendered shall appear in alphabetical order, and it shall be the duty of the clerk immediately after the rendition of a judgment to enter on said judgment docket a statement containing the names of the parties, the amount and nature of the judgment and costs, and date of its rendition, and the date on which said judgment is entered on said judgment docket; and if the judgment be rendered against several persons, the entry shall be repeated under the name of each person against whom the judgment is rendered in alphabetical order. [TCR 86-79]

1-230 Execution docket. In the execution docket, the clerk shall enter all executions as they are issued. The entry shall contain the names of the parties, the date and amount of the judgment and costs, and the date of the execution. The clerk shall also record in full the return of the captain of law enforcement officers to each execution, and such record shall be evidence of such return, if the original be mislaid or lost.

1-231 Clerk may collect judgment and costs. Where there is no execution outstanding, the clerk of the Court may receive the amount of the judgment and costs, and receipt therefore, with the same effect as if the same had been paid to the captain of the law enforcement as an execution, and the clerk shall be liable to be amerced in the same manner and amount as the captain of the law enforcement officers for refusing to pay the same to the party entitled thereto, when requested, and shall also be liable on his/her official bond. [TCR 86-79]

1-232 Clerk to issue writs and orders. All writs and orders for provisional remedies, and process of every kind shall be prepared by the party or his/her attorney who is seeking the issuance of such writ, order, or process and shall be issued by the clerk. Except for summons and subpoenas, the clerk shall not issue any such writ, order or process except upon order or allowance of the Court unless specific authorizations for his/her issuing such document is found in the Tribal Code. [TCR 86-79]

1-233 Clerk to file and preserve papers. It is the duty of the clerk to file together and carefully preserve in his/her office, all papers delivered to him/her for that purpose in every action or proceeding. [TCR 86-79]

1-234 Each case to be kept separate. The papers in each case shall be kept in a separate file marked with the title number of each case. [TCR 86-79]

1-235 Endorsements. The clerk shall endorse upon every paper filed with him/her, the day of filing it; upon every order for a provisional remedy, and upon every undertaking given under the same, the day of its return to his/her office. [TCR 86-79]

1-236 Entry on return of summons. The clerk shall, upon the return of every summons, enter upon the appearance docket whether or not service has been made; and if the summons has been served, the name of the defendant summoned and the day and manner of the service upon each one. The entry shall be evidence in case of the loss of summons.

1-237 Material for record. The record shall be made up from the complaint, the process, return, the pleadings subsequent thereto, reports, verdicts, orders, judgments, and all material acts and proceedings of the Court, but if the items of an account, or the copies of papers attached to the pleadings, are voluminous, the Court may order the record to be made by abbreviating the same, or inserting a pertinent description thereof, or by omitting them entirely. Evidence must not be recorded in the file or appearance docket, provided that the transcript of testimony may be appended to the record when paid for by a party for purpose of appeal. [TCR 86-79]

1-238 Memorializing record. It is the duty of the Court to write out, sign and record its orders, judgments, and decrees within a reasonable time after their rendition. To aid in the performance of this duty, the Court may direct counsel or the Court clerk to prepare the written memorialization for its signature and, after it is signed, to file it in the case record, or the Court may direct the clerk to prepare the written memorialization dictated by the Court and sign and file the same on the Court's behalf. [TCR 86-79]

1-239 Clerk to keep Court records, books and papers, statistical and other information.

1. The clerk shall keep the records, books and papers pertaining to the Court and record its proceedings, and exercise the powers and perform the duties imposed upon him/her by the Tribal statute, order of the Court, or Court rule. The clerk is directed to furnish annually, or at such times as shall be requested, without cost to the Tribal Court and to the Tribal Council, such statistical and other information as the Tribal Council may require, including, but without being limited to, the number and classification of cases:
   a. Filed with Court.
   b. Disposed of by Court, and the manner of such disposition.
   c. The number of cases pending before Court. [TCR 86-79]

1-240 Applicable to all Courts within Tribe's jurisdiction. The provisions of this Title shall apply to the clerk of the Tribal Court and all other Courts within the Tribe's jurisdiction. [TCR 86-79]

1-241 Bonds. The Court clerk and each deputy clerk shall be bonded by a fidelity bond to guarantee the proper performance of his/her duties and his/her fidelity in handling of the money and other property coming into his/her hands in the performance of his/her duties. The amount of such bond shall be set by the Tribal Council and the cost thereof shall be paid from Tribal funds. [TCR 86-79]

1-242 Probation and parole officers.

1. The Court shall have one or more persons to be probation or parole officers. The qualifications, terms of employment and compensation of such officers shall be determined by the personnel department.
2. Probation and parole officers, subject to the supervision of the Chief Judge, shall have the responsibility of assuring the faithful performance of the probation or parole agreements by persons subject thereto, counseling such persons and their families, preparing presentence or other reports as requested by a Tribal judge, and doing such other things as may be directed by a Tribal judge or otherwise required by law.
3. A probation and parole officer shall have the authority of a police officer to make arrest for violation of probation or parole agreements. [TCR 86-79]

1-243 Creation of prosecutor's office. There is hereby created an office which shall be known as the prosecutor's office. The officers shall be known as prosecutors and shall be officers of the Winnebago Tribal Court System. [TCR 96-22]

1-244 Functions of the prosecutor(s).

1. The prosecutor(s) is charged with the responsibility of seeing that justice is administered within the Tribe's jurisdiction.
2. It is the duty of the prosecutor(s) to know and be guided by the standards of professional conduct as defined in the Codes and canons of the legal profession.

3. It is the duty of the prosecutor to do such other duties which shall be required in this Code and which shall be required to carry out the efficient operation of the Tribal Court. [TCR 86-79]

1-245 Creation of defender's office. There is hereby created an office which shall be known as the defender's office. The officers shall be officers of the Winnebago Tribal Court System. [TCR 96-22]

1-246 Functions of the defender(s).

1. The basic duty the lawyer acting as defender owes to the administration of justice is to serve the public as counselor and advocate with courage, devotion and to the utmost of his/her learning and ability and according to law.
2. It is the duty of every defender to know the standards of professional conduct as defined in Codes and canons of the legal profession.
3. It is the duty of the defender to do such other duties which shall be required in this Code and which shall be required to carry out the efficient operation of the Winnebago Tribal Court System. [TCR 96-22]

TITLE 1
ARTICLE 3
WINNEBAGO SUPREME COURT
RULES OF APPELLATE PROCEDURE
APPLICABILITY OF RULES

Rule 1 Scope of rules.
Rule 2 Suspension of rules.
Rule 3 Appeal as of right—how taken.
Rule 4 Appeal as of right—when taken.
Rule 5 Reserved for provisions relating to interlocutory appeals in civil actions.
Rule 6 Reserved for provisions relating to interlocutory appeals in criminal actions.
Rule 7 Bond for costs on appeal in civil cases.
Rule 8 Stay or injunction pending appeal.
Rule 9 Release in criminal cases.
Rule 10 The record on appeal.
Rule 11 Transmission of record.
Rule 12 Docketing the appeal; filing the record.
Rule 13 Reserved.
Rule 14 Reserved.
Rule 15 Reserved.
Rule 16 Reserved.
Rule 17 Reserved.
Rule 18 Reserved.
Rule 19 Reserved.
Rule 20 Reserved.
Rule 21 Writs.
Rule 22 Habeas corpus proceedings.
Rule 23 Custody of prisoners in habeas corpus proceedings.
Rule 24 Proceedings in forma pauperis.
Rule 25 Filing and service.
Rule 26 Computation and extension of time.
Rule 27 Motion.
Rule 28 Briefs.
Rule 29 Brief of an amicus curiae.
Rule 30 Appendix to the briefs.
Rule 31 Filing and service of briefs.
Rule 32 Form of briefs, the appendix, and other papers.
Rule 33 Prehearing conference.
Rule 34 Oral argument.
Rule 35 Determination of causes by the court en banc.
Rule 36 Entry of judgment.
Rule 37 Interest on judgments.
Rule 38 Damages for delay.
Rule 39 Costs.
Rule 40 Petition for rehearing.
Rule 41 Issuance of mandate.
Rule 42 Voluntary dismissal
Rule 43 Substitution of parties.
Rule 44 Cases involving constitutional or Indian civil rights act question where the Winnebago Tribe is not a party.

Rule 1 SCOPE OF RULES.

a. Scope. These rules govern procedure in appeals to the Winnebago Supreme Court from the Winnebago Tribal Court or the Winnebago Juvenile Court; and in applications for writs or other relief which the Winnebago Supreme Court or a judge thereof is competent to give. When these rules provide for the making of a motion or application in the Winnebago Tribal Court or the Winnebago Juvenile Court, the procedure for making such motion or application shall be in accordance with the practice of those respective courts.

b. "Tribal Court" defined. Unless otherwise specifically stated, the term "Tribal Court" as used in these Rules shall be deemed to refer to both the Winnebago Tribal Court and Winnebago Juvenile Court.

c. Jurisdiction not affected. These Rules shall not be construed to extend or limit the jurisdiction of the Winnebago Supreme Court as established by the laws of the Winnebago Tribe of Nebraska; and all provisions of these Rules shall be subject to the Constitution, the Law and Order Code, and Ordinances of the Winnebago Tribe of Nebraska.

Rule 2 SUSPENSION OF RULES. In the interest of expediting decision(s), the furtherance of the administration of justice, or for other good cause shown, the Winnebago Supreme Court may, except as provided in Rule 26(b), suspend the requirements or provisions of any of these Rules in a particular case on application of a party or on its own motion, and may order proceedings in accordance with its direction.

PART II
APPEALS FROM JUDGMENTS AND ORDERS OF THE TRIBAL COURT

Rule 3 APPEAL AS OF RIGHT—HOW TAKEN.

a. Filing the notice of appeal. An appeal permitted by the laws of the Tribe as of right from the Tribal Court to the Winnebago Supreme Court shall be taken by filing a notice of appeal with the clerk of the Tribal Court within the time allowed by Rule 4, or by the statute applicable in the specific case. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the Winnebago Supreme Court deems appropriate, which may include dismissal of the appeal.

b. Joint or consolidated appeals. If two or more persons are entitled to appeal from a judgment or order of the Tribal Court, and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate timely notices of appeal, and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the Winnebago Supreme Court upon its own motion or upon motion of a party, or by stipulation of the parties to the several appeals.

c. Content of the notice of appeal. The notice of appeal shall specify the parties to the appeal, shall designate the order, commitment, or judgment appealed from, whether the appeal is from the Winnebago Tribal Court or the Winnebago Juvenile Court, and a short statement of the reasons or grounds for the appeal. An appeal shall not be dismissed for informality of form or title of the notice of appeal.

d. Service of the notice of appeal. The clerk of the Tribal Court shall serve notice of the filing of a notice of appeal by mailing a copy thereof (which copy shall be provided by the appealing party) to counsel of record of each party other than the appellant, and to the party at his/her last known address; and shall forthwith certify and deliver to the clerk of the Supreme Court for filing the notice of appeal, who shall enter such filing upon the docket of the Supreme Court. When an appeal is taken by a defendant in a criminal case, the clerk shall also serve a copy of the notice of appeal upon him/her, either by personal service or by mail addressed to him/her. The clerk shall note on each copy served the date on which the notice of appeal was filed. Failure of the clerk to serve notice shall not affect the validity of the appeal. Service shall be sufficient notwithstanding the death of a party or his/her counsel. The clerk shall note in the docket the names of the parties to whom he/she mails copies with the date of mailing.

e. Payment of fees. Upon the filing of any separate or joint notice of appeal from the Tribal Court, the appellant shall pay to the clerk of the Tribal Court, for deposit in the Court Fund, a filing fee of twenty dollars ($20.00), except that payment of a filing fee shall not be required for an appeal by the Winnebago Tribe of Nebraska, its officers, or agents when acting in their official capacity. If a private party joins in an appeal by the Tribe, Tribal officers, or Tribal agents, the private party shall pay the required filing fee. The Supreme Court, or a judge or justice thereof, may waive payment of the filing fee in criminal cases when the defendant, by affidavit or otherwise, establishes that he/she is without sufficient funds or resources with which to pay the required fees.

Rule 4 APPEAL AS OF RIGHT—WHEN TAKEN.

a. Appeals in civil cases.

1. In a civil case in which an appeal is permitted by law as of right from the Tribal Court to the Winnebago Supreme Court, the notice of appeal required by Rule 3 shall be filed with the clerk of the Tribal Court within the following time periods after entry of the judgment or order appealed from if a time certain is not otherwise provided by statute:
   - i. From an order or judgment in an action for forcible entry or forcible or unlawful detainer: Ten (10) days;
   - ii. From an order, decree, or judgment of the Tribal Court (except an order, decree, or judgment which terminates parental right): One (1) month;
   - iii. From an order, decree, or judgment of the Tribal Court which terminates parental rights: Three (3) months;
   - iv. From a final order, commitment, or judgment in any civil case not hereinabove provided for: Twenty (20) days.
2. Except as provided in (a)(4) of Rule 4, a notice of appeal filed after the announcement of a decision or order, but before the entry of the judgment or order, shall be treated as filed after such entry and on the day thereof.
3. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within fourteen (14) days after the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period last expires.
4. If a timely motion under the Winnebago Rules of Civil Procedure is filed in the Tribal Court by any party, the time for appeal for all parties shall run from the entry of the order denying a new trial or granting or denying any other such motion. A notice of appeal filed before the disposition of any of the above motions shall have no effect. A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the motion as provided above. No additional fees shall be required for such filing.
5. The Tribal Court, upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal in a civil action upon motion filed not later than thirty (30) days after the expiration of the time prescribed by this Rule 4(a). Any such motion which is filed before expiration of the prescribed time for the filing of notice of appeal may be ex parte unless the Tribal Court otherwise requires. Notice of any such motion which is filed after expiration of the prescribed time shall be given to the other parties in accordance with the Rules of Civil Procedure. No such extension shall exceed thirty (30) days past such prescribed time or ten (10) days from the date of entry of the order granting the motion, whichever occurs later.
6. A judgment or order is entered within the meaning of this Rule 4(a) when it is entered in compliance with the Winnebago Rules of Civil Procedure.

b. Appeals in criminal cases. In a criminal case, the notice of appeal by a defendant shall be filed in the Tribal Court within ten (10) days of the entry of the final judgment or other appealable order appealed from. A notice of appeal filed after the announcement of a decision, sentence, or order, but before entry of the judgment or order, shall be treated as filed after such entry and on the day thereof. If a timely motion for a new trial pursuant to Rule 36 of the Winnebago Rules of Criminal Procedure on any ground other than newly discovered evidence has been made, an appeal from a judgment of conviction may be taken within ten (10) days after the entry of an order denying the motion. A motion for a new trial based on the ground of newly discovered evidence will similarly extend the time for appeal from a judgment of conviction if the motion is made before or within ten (10) days after entry of the judgment. When an appeal by the Tribe is authorized by statute, the notice of appeal shall be filed by the Tribe in the Tribal Court within ten (10) days after the entry of the judgment or order appealed from unless a different time is

specifically set by the statute authorizing the appeal. A judgment or order is entered within the meaning of this subdivision when it is entered in the criminal docket pursuant to the Winnebago Rules of Criminal Procedure. Upon showing of excusable neglect, the Supreme Court may, before or after the time has expired, with or without motion or notice, extend the time for filing a notice of appeal for a period not to exceed thirty (30) days from the expiration of the time otherwise prescribed by this subdivision of these Rules.

Rule 5 RESERVED FOR PROVISIONS RELATING TO INTERLOCUTORY APPEALS IN CIVIL ACTIONS.

Rule 6 RESERVED FOR PROVISIONS RELATING TO INTERLOCUTORY APPEALS IN CRIMINAL ACTIONS.

Rule 7 BOND FOR COSTS ON APPEAL IN CIVIL CASES. The Tribal Court may require an appellant to file a bond or provide other security in such form and amount as it finds necessary to ensure payment of costs on appeal in a civil case. The provisions of Rule 8(b) apply to a surety upon a bond given pursuant to this Rule.

Rule 8 STAY OR INJUNCTION PENDING APPEAL.

a. Procedure. Application for a stay of the judgment or order of the Tribal Court pending appeal, or for approval of a supersedeas bond, or for an order suspending, modifying, restoring or granting an injunction during the pendency of an appeal must ordinarily be made in the first instance in the Tribal Court. A motion for such relief may be made to the Winnebago Supreme Court, or to a judge thereof, but the motion shall show that application to the Tribal Court for the relief sought is not practicable, or that the Tribal Court has denied an application or has failed to afford relief which the applicant requested, with the reasons given by the Tribal Court for its action. The motion shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute, the motion shall be supported by affidavits or other sworn statements or copies thereof. With the motion shall be filed such parts of the record as are relevant to the motion. Reasonable notice of the motions shall be given to all parties. The motion shall be filed with the clerk of the Tribal Court, and normally will be considered by the entire Supreme Court, but in exceptional cases where such procedure would be impracticable due to the requirements of time, the application may be made to and considered by a single judge of the Court pending review by the entire Court. In cases where relief has not been previously requested in the Tribal Court, the Supreme Court may, if it determines such action to be appropriate under the circumstances, remand the motion to the Tribal Court for its initial determination.

b. Bond, proceedings against sureties. Relief available in the Supreme Court under this Rule may be conditioned upon the filing of a bond or other appropriate security in the Tribal Court. If security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits himself to the jurisdiction of the Tribal Court and irrevocably appoints the clerk of the Tribal Court as his/her agent upon whom any papers affecting his/her liability on the bond or undertaking may be served. It is the responsibility of the surety to provide the clerk of the Tribal Court with his/her proper and current address, and a supply of stamped, self-addressed envelopes, if he/she wishes copies of any papers served upon the clerk as his/her agent to be mailed to him/her. His/her liability may be enforced on motion in the Tribal Court without the necessity of an independent action. The motion and such notice of the motion as the Tribal Court shall prescribe may be served on the clerk of the Tribal Court who shall forthwith mail copies to the sureties if their addresses are known.

c. Criminal cases. Appeal in criminal cases shall be had in accordance with the provisions of Rule 40 of the Winnebago Rules of Criminal Procedure.

Rule 9 RELEASE IN CRIMINAL CASES.

a. Appeal of order denying release pending appeal. An appeal authorized by law from an order refusing or imposing conditions of release pending appeal of the underlying judgment of conviction and sentence shall be determined promptly. Upon entry of an order refusing or imposing conditions of release pending appeal of the underlying judgment of conviction and sentence, the Tribal Court shall state in writing the reasons for the action taken. The appeal in such matters shall be heard without the necessity of briefs after reasonable notice to the appellee upon such papers, affidavits, and portions of the record as the parties shall present. The Supreme Court, or a judge thereof pending action by the entire Court, may order the release of the appellant pending the appeal.

b. Procedure. Application for release after a judgment of conviction shall be made in the first instance in the Tribal Court. If the Tribal Court refuses release pending appeals, or imposes conditions of release, the Court shall state in writing the reasons for the action taken. Thereafter, if an appeal is pending, a motion for release, or for modification of the conditions of release, pending review may be made to the Supreme Court or to a designated judge thereof. The motion shall be determined promptly upon such papers, affidavits, and portions of the record as the parties shall present and after reasonable notice to the appellee. The Supreme Court or a judge thereof, pending action by the entire Court, may order the release of the appellant pending disposition of the motion.

c. Criteria for release. The decision as to release pending appeal shall be made as follows: The burden of establishing that the defendant will not flee or pose a danger to any other person or to the community rests with the defendant.

Rule 10 THE RECORD ON APPEAL.

a. Composition of the record on appeal. The original papers and exhibits filed in the Tribal Court, the transcript or tape recording of the proceedings, if any, and a certified copy of the docket entries prepared by the clerk of the Tribal Court shall constitute the record on appeal in all cases.

b. Transcript, duty of appellant to order, notice of partial transcript.

1. Within ten (10) days after filing the notice of appeal, the appellant shall order from the clerk or reporter a transcript of such parts of the proceedings not already on file as he/she deems necessary. The order shall be in writing, and within the same period a copy shall be filed with the clerk of the Tribal Court. If no such parts of the proceedings are to be ordered, within the same period, the appellant shall file a certificate to that effect.
2. If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, he/she shall include in the record a transcript of all evidence relevant to such finding or conclusion.
3. Unless the entire transcript is to be included, the appellant shall, within the ten (10) days time provided in (b)(1) of this Rule 10, file a statement of the issues he/she intends to present on the appeal and shall serve on the appellee a copy of the order or certificate and of the statement. If the appellee deems a transcript of other parts of the proceedings to be necessary, he/she shall, within ten (10) days after the service of the order or certificate and the statement of the appellant, file and serve on the appellant a designation of additional parts to be included. Unless within ten (10) days after service of such designation the appellant has ordered such parts, and has so notified the appellee, the appellee may within the following ten (10) days order the parts or move in the Tribal Court for an order requiring the appellant to do so.
4. At the time of ordering, a party must make satisfactory arrangements with the reporter for payment of the cost of the transcript. If a typewritten transcript is ordered, the clerk or reporter shall charge a fee of one dollar and fifty cents ($1.50) for each original page, and

fifty cents ($ .50) for each copy of an original page. If a copy of a tape recording of the proceedings is ordered, the clerk or reporter shall charge fifteen dollars ($15.00) per each sixty (60) minute tape copy ordered. All such fees paid on behalf of a clerk or reporter paid by Tribal monies shall be deposited in the Court Fund, unless specific statutory authority for other disposition of such monies is provided. All such fees paid on behalf of an independent reporter appointed or authorized by the Tribal Court to record its proceedings, but not paid from Tribal funds, shall be paid over to such reporter.

c. Procedure when no transcript available. If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including his/her recollection. The statement shall be served on the appellee, who may serve objections or propose amendment thereto within ten (10) days after service. Thereupon, the statement and any objections or proposed amendments shall be submitted to the Tribal Court for settlement and approval, and as settled and approved shall be included by the clerk of the Tribal Court in the record on appeal.

d. Agreed statement as the record on appeal. In lieu of the record on appeal as defined in subdivision (a) of this Rule, the parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the trial court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. If the statement conforms to the truth, it, together with such additions as the Court may consider necessary fully to present the issues raised by the appeal, shall be approved by the Tribal Court, and shall then be certified to the Supreme Court as the record on appeal and transmitted to the Supreme Court records.

e. Correction or modification of the record. If any difference arises as to whether the record truly discloses what occurred in the Tribal Court, the difference shall be submitted to and settled by the judge of that Court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the Tribal Court, either before or after the record is transmitted to the Supreme Court on proper suggestion or of its own initiative, may direct that the omission or misstatement be corrected, and if necessary, that a supplemental record be certified and transmitted. All other questions as to the form and content of the record shall be presented to the Winnebago Supreme Court.

Rule 11 TRANSMISSION OF RECORD.

a. Chief clerk to serve as appellate court clerk. The chief clerk of the Tribal Court shall also serve as the clerk of the Supreme Court in all cases arising in the Winnebago Tribal Courts.

b. Transmission and filing of record. In all cases, including juvenile, civil and criminal actions, the clerk in charge of the papers in that case shall, within five (5) working days after a notice of appeal is filed, prepare, certify, and deliver to the clerk of the Supreme Court for filing with the Supreme Court all papers comprising the record of the case appealed except the transcript. Such compilation shall be indexed with page numbers. All parties to the appeal shall be notified of the filing of the record with the Supreme Court, and a copy of the index to the record shall be attached to the notice for the benefit of the parties. Copies of any documents contained in the record shall be available to the parties at a cost of twenty-five cents ($ .25) per page.

c. Completion of record. Upon receipt of an order for a transcript or additional tape recording, the clerk or reporter shall acknowledge at the foot of the order the fact that he/she has received it and the date on which he/she expects to have the transcript or copy of the tape recording completed and shall transmit the order, so endorsed, to the clerk of the Supreme Court. If the transcript cannot be completed within thirty (30) days of receipt of the order, the clerk or reporter shall request an extension of time from the clerk of the Supreme Court, and the action of the clerk of the Supreme Court shall be entered on the docket and the parties notified. In the event of the

failure to file the transcript or complete making copies of the tapes within the time allowed, the clerk of the Supreme Court shall notify the chief judge of the Supreme Court and take such steps as may be directed by the chief judge of the Supreme Court. Upon completion of the transcript, the clerk or reporter shall file it with the clerk of the Tribal Court and shall notify the clerk of the Supreme Court that he/she has done so.

d. Transmission of transcript. Upon receipt of the transcript, or notification that requested copies of tape recordings of the proceedings are completed, or the filing of a statement as provided in Rule 10(c) or (d), the clerk of the Tribal Court shall forthwith notify the parties that the transcript, tapes, or statement is completed and ready for transmittal to the Winnebago Supreme Court, shall state in the notice the date upon which the notice was given, and the date the final record will be delivered to the Winnebago Supreme Court. The parties may receive their copies (if ordered) of such transcript, tapes, or statement as soon as they become available whether before or after formal notice of such availability is mailed to the parties. Fifteen (15) days after the mailing of the notice of completion of the transcript, tapes, or statement, the clerk of the Tribal Court shall deliver the original thereof to the clerk of the Winnebago Supreme Court for filing. Upon filing by the clerk of the Supreme Court, the record shall be deemed received and completed for the purposes of the appeal.

Rule 12 DOCKETING THE APPEAL; FILING THE RECORD.

a. Docketing the appeal. Upon receipt of the Notice of Appeal and of the docket entries and papers transmitted by the clerk of the Tribal Court pursuant to Rule 3(d), the clerk of the Supreme Court shall thereupon enter the appeal on the docket. An appeal shall be docketed under the title given to the action in the Tribal Court, with the appellant identified as such, but if such title does not contain the name of the appellant, his/her name, identified as appellant, shall be added to the title. In Juvenile Court appeals, the docket books shall contain the correct names of the parties, however, all opinions or other papers of the Court, which may become public information, shall contain only initials or other similar designations and not the names of the parties.

b. Upon receipt of the completed record on appeal as provided in Rule 11(d), the clerk of the Supreme Court shall file it and shall immediately give notice to all parties of the date on which it was filed.

PART III
RESERVED

Rule 13 RESERVED.

Rule 14 RESERVED.

Rule 15 RESERVED.

PART IV
RESERVED

Rule 16 RESERVED.

Rule 17 RESERVED.

Rule 18 RESERVED.

Rule 19 RESERVED.

Rule 20 RESERVED.

PART V
EXTRAORDINARY WRITS

Rule 21 WRITS.

a. Mandamus or prohibition directed to a judge or judges. Application for a writ of mandamus or of prohibition directed to a judge or judges shall be made by filing a petition therefore with the clerk of the Supreme Court with proof of service on the respondent judge or judges and on all parties in interest to the action in the Tribal Court. The petition shall contain a statement of the facts necessary to an understanding of the issues presented by the application; a statement of the issues presented and the relief sought; a statement of the reasons why the writ should issue; and copies of any order or opinion or parts of the record which may be essential to an understanding of the matters set forth in the petition. The clerk shall docket the petition and submit it to the Court upon payment of a docketing fee of twenty dollars ($20.00).

b. Denial or order directing answer. If the Court is of the opinion that the writ should not be granted in any case on the facts and law stated in the petition, it shall deny the petition. Otherwise, it shall order that an answer to the petition be filed by the respondents within the time fixed by the order. The order shall be served by the clerk on the judge or judges, named respondents and on all other parties to the action in the trial court. All parties below other than the petitioner shall also be deemed respondents for all purposes. Two or more may answer jointly. If the judge or judges named respondents who do not desire to appear in the proceeding, they may so advise the clerk and all parties by letter, but the petition shall not thereby be taken as admitted. The clerk shall advise the parties of the dates on which briefs are to be filed, if briefs are required, and of the date of oral argument, if any. The proceedings shall be given preference over ordinary civil cases. These writs may be used to compel a judge to perform a required action or to refrain from exceeding his/her jurisdiction, but may not be used to control the judge's discretionary actions.

c. Other extraordinary writs. Application for extraordinary writs other than those provided for in subdivisions (a) and (b) of this Rule shall be made by petition filed with the clerk of the Supreme Court with proof of service on the parties named as respondents. Proceedings on such applications shall conform, so far as is practicable, to the procedure prescribed in subdivisions (a) and (b) of this Rule.

d. Form of papers, number of copies. All papers may be typewritten. Three (3) copies of the original shall be filed, but the Court may direct that additional copies be furnished.

PART VI
HABEAS CORPUS; PROCEEDINGS IN FORMA PAUPERIS

Rule 22 HABEAS CORPUS PROCEEDINGS. An application for a writ of habeas corpus shall be made to the Winnebago Tribal Court. If application is made to the Supreme Court, or a judge or justice thereof individually, the application will ordinarily be transferred to the Tribal Court for determination. The Supreme Court, or a judge or justice thereof, will accept original jurisdiction in such matters only upon a showing of compelling necessity and urgency. If an application is made to or transferred to the Tribal Court and denied, renewal of the application before the Supreme Court, or a judge or justice thereof is not favored; the proper remedy is by appeal to the Supreme Court from the order of the Tribal Court denying the writ.

Rule 23 CUSTODY OF PRISONERS IN HABEAS CORPUS PROCEEDINGS.

a. Transfer of custody pending review. Pending review of a decision in a habeas corpus proceeding commenced before a court, justice or judge of the Winnebago Tribe for the release of a prisoner, a person having custody of the prisoner shall not transfer custody to another unless such transfer is directed in accordance with the provisions of this Rule. Upon application of a custodian showing a need therefor, the Court, justice or judge rendering a decision may make an order authorizing transfer and providing for the substitution of the successor custodian as a party.

b. Detention or release pending review of decision failing to release. Pending review of a decision failing or refusing to release a prisoner in such a proceeding, the prisoner may be detained in the custody from which release is sought, or in other appropriate custody, or may be released upon his/her recognizance, with or without surety, as may appear fitting to the Court or justice or judge rendering the decision, or to the Supreme Court en banc.

c. Detention or release pending review of decision ordering release. Pending review of a decision ordering the release of a prisoner in such a proceeding, the prisoner shall be released upon his/her recognizance, with or without surety, unless the Court or justice or judge rendering the decision, or the Supreme Court shall otherwise order.

d. Modification of initial order respecting custody. An initial order respecting the custody or release of the prisoner and any recognizance of surety taken shall govern review in the Supreme Court unless for special reasons shown to the Supreme Court the order shall be modified, or an independent order respecting custody, release or surety shall be made.

Rule 24 PROCEEDINGS IN FORMA PAUPERIS.

a. Leave from Tribal Court to proceed to Supreme Court. A party to an action in the Tribal Court who desires to proceed on appeal in forma pauperis shall file in the Tribal Court a motion for leave so to proceed, together with an affidavit showing, in explicit detail, his/her inability to pay fees and costs or to give security therefor, his/her belief that he/she is entitled to redress, and a statement of the issues which he/she intends to present on appeal. If the motion is granted, the party may proceed without further application to the Supreme Court, and without prepayment of fees or costs in either court or the giving of security therefor. If the motion is denied, the Tribal Court shall state in writing the reasons for the denial.

b. Special rule for parties previously granted permission to proceed in forma pauperis. Notwithstanding the provisions of the preceding paragraph, a party who has been permitted to proceed in an action in the Tribal Court in forma pauperis, or who has been permitted to proceed there as one who is financially unable to obtain an adequate defense in a criminal case, or a case involving the termination of parental rights, may proceed on appeal in forma pauperis without further authorization unless, before or after the notice of appeal is filed, the Tribal Court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not

entitled so to proceed, in which event the Tribal Court shall state in writing the reasons for such certification or finding.

c. Remedy for denial of motion by Tribal Court. If a motion for leave to proceed on appeal in forma pauperis is denied by the Tribal Court, or if the Tribal Court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled to proceed in forma pauperis, the clerk shall forthwith serve notice of such action. A motion for leave so to proceed may be filed in the Supreme Court within thirty (30) days after service of notice of the action of the Tribal Court. The motion shall be accompanied by a copy of the affidavit filed in the Tribal Court, or by the affidavit prescribed by the first paragraph of this subdivision if no affidavit has been filed in the Tribal Court, and by a copy of the statement of reasons given by the Tribal Court for its action.

PART VII
GENERAL PROVISIONS

Rule 25 FILING AND SERVICE.

a. Filing. Papers required or permitted to be filed in the Supreme Court shall be filed with the clerk. Filing may be accomplished by mail addressed to the clerk, but filing shall not be timely unless the papers are received by the clerk within the time fixed for filing, except that briefs and appendices shall be deemed filed on the day of mailing if the most expeditious form of delivery is by mail, excepting special delivery or overnight mail, is utilized. If a motion requests relief which may be granted by a single judge, the judge may permit the motion to be filed with him/her, in which event he/she shall note thereon the date of filing and shall thereafter transmit it to the clerk.

b. Service of all papers required. Copies of all papers filed by any party and not required by these Rules to be served by the clerk shall, at or before the time of filing, be served by a party or person acting for him/her on all other parties to the appeal or review. Service on a party represented by counsel or lay advocate shall be made on the counsel or lay advocate.

c. Manner of service. Service may be personal or by mail. Personal service includes delivery of the copy to a clerk, secretary, or other responsible person at the office of counsel or lay advocate. Service by mail is complete upon mailing.

d. Proof of service. Papers presented for filing shall contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the name of the person served, certified by the person who made service. Proof of service may appear on or be affixed to the papers filed. The clerk may permit papers to be filed without acknowledgment or proof of service, but shall require such to be filed promptly thereafter.

Rule 26 COMPUTATION AND EXTENSION OF TIME.

a. Computation of time. In computing any period of time prescribed by these Rules, by an order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period extends until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. As used in this Rule, “legal holiday” includes New Year’s Day, Tribal Constitution Day, Memorial Day, Independence Day, Friday of Pow-Wow, Labor Day, Tribal Election Day, Native American Day, Veterans Day, Thanksgiving Day and Day After (Friday), Christmas Day and any other day appointed as a holiday by the President or the Congress of the United States or the Tribal Council of the Winnebago Tribe.

b. Enlargement of time. The Court, for good cause shown, may upon motion enlarge the time prescribed by these Rules or by its order for doing any act, or may permit an act to be done after the expiration of such time; but the Supreme Court may not enlarge the time for filing a notice of appeal.

c. Additional time after service by mail. Whenever a party is required or permitted to do an act within a prescribed period after service of a paper upon him/her and the paper is served by mail, three (3) days shall be added to the prescribed period.

Rule 27 MOTION

a. Content, response, reply. Unless another form is elsewhere prescribed by these Rules, an application for an order or other relief shall be made by filing a motion for such order or relief with proof of service on all other parties. The motion shall contain or be accompanied by any matter required by a specific provision of these Rules governing such a motion, shall state with particularity the grounds on which it is based, and shall set forth the order or relief sought. If a motion is supported by briefs, affidavits, or other papers, they shall be served and filed with the motion. Any party may file a response in opposition to a motion other than one for a procedural order within seven (7) days after service of the motion, but motions authorized by Rules 8, 9, and 41 may be acted upon after reasonable notice, and the Court may shorten or extend the time for responding to any motion.

b. Determination of motions for procedural orders. Notwithstanding the provisions of (a) of this Rule 27 as to motions generally, motions for procedural orders, including any motion under Rule 26(b), may be acted upon at any time, without awaiting a response thereto, and pursuant to rule or order of the court, motions for specified types of procedural orders may be disposed of by the clerk. Any party adversely affected by such action may, by application to the Court, request consideration, vacation or modification of such action.

c. Power of a single judge to entertain motions. In addition to the authority expressly conferred by these Rules or by law, a single judge of an appellate court may entertain and may grant or deny any request for relief which under these Rules may properly be sought by motion, except that a single judge may not dismiss or otherwise determine an appeal or other proceeding, and except that an appellate court may provide by order or rule that any motion or class of motions must be acted upon by the court. The action of a single judge may be reviewed by the court.

d. Form of papers; number of copies. All papers relating to motions may be typewritten. Three (3) copies shall be filed with the original, but the court may require that additional copies be furnished.

Rule 28 BRIEFS.

a. Brief of the appellant. The brief of the appellant shall contain under appropriate headings and in the order here indicated:

1. A table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with reference to the pages of the brief where they are cited.
2. A statement of the issues presented for review.
3. A statement of the case. The statement shall first indicate briefly the nature of the case, the course of proceedings, and its disposition in the court below. There shall follow a statement of the facts relevant to the issues presented for review, with appropriate references to the record (see subdivision (e)).
4. An argument. The argument may be preceded by a summary. The argument shall contain the contentions of the appellant with respect to the issues presented, and the

reasons therefor, with citations to the authorities, statutes and parts of the record relied on.

5. A short conclusion stating the precise relief sought.

b. The brief of the appellee shall conform to the requirements of subdivision (a)(1)-(4), except that a statement of the issues or of the case need not be made unless the appellee is dissatisfied with the statement of appellant.

c. Reply brief. The appellant may file a brief in reply to the brief of the appellee, and if the appellee has cross-appealed, the appellee may file a brief in reply to the response of the appellant to the issues presented by the cross appeal. No further briefs may be filed except with leave of court.

d. References in briefs to parties. Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such designations as “appellant” and “appellee.” It promotes clarity to use the designations used in the lower court or the actual name of the parties, or descriptive terms such as “the employee,” “the injured person,” “the taxpayer,” “the car,” etc.

e. References in briefs to the record. References in the briefs to parts of the record reproduced in any appendix filed with the brief of the appellant (see Rule 30) shall be to the pages of the appendix at which those parts appear and to the pages in the original record. If an appendix is prepared after the briefs are filed, references in the briefs to the record shall be made to the original record. Intelligible abbreviations may be used. If reference is made to evidence, the admissibility of which is in controversy, reference shall be made to the pages of the record or of the transcript at which the evidence was identified, offered, and received or rejected.

f. Reproduction of statutes, rules, regulations, etc. If determination of the issues presented requires the study of statutes, rules, regulations, etc. or relevant parts thereof, they shall be reproduced in the brief or in an addendum at the end, or they may be supplied to the Court in pamphlet form.

g. Length of briefs. Except by permission of the Court, principal briefs shall not exceed fifty (50) pages, and reply briefs shall not exceed twenty-five (25) pages, exclusive of pages containing the table of contents, table of citations and any addendum containing statutes, rules, regulations, etc.

h. Briefs in cases involving cross appeals. If a cross appeal is filed, the plaintiff in the court below shall be deemed the appellant for the purposes of this Rule and Rule 31, unless the parties otherwise agree or the Court otherwise orders. The brief of the appellee shall contain the issues and argument involved in his/her appeal as well as the answer to the brief of the appellant.

i. Briefs in cases involving multiple appellants or appellees. In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

j. Citation of supplemental authorities. When pertinent and significant authorities come to the attention of a party after his/her brief has been filed, or after oral argument but before decision, a party may promptly advise the clerk of the court, by letter with a copy to all counsel, setting forth the citations. There shall be a reference either to the page of the brief or to a point argued orally to which the citations pertain, but the letter shall without argument state the reasons for the supplemental citations. Any response shall be made promptly and shall be similarly limited.

Rule 29 BRIEF OF AN AMICUS CURIAE. A brief of an amicus curiae may be filed only if accompanied by written consent of all parties, or by leave of Court granted on motion or at the request of the Court, except that consent to leave shall not be required when the brief is presented by the Winnebago Tribe, the United States or an officer or agency thereof, or by a state, territory, commonwealth or Indian tribe. The brief may be conditionally filed with the motion for leave. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of amicus curiae is desirable. Save us all parties otherwise consent, any amicus curiae shall file its brief within the time allowed the party whose position as to affirmance or reversal the amicus brief will support unless the Court for cause shown shall grant leave for later filing, in which event it shall specify within what period an opposing party may

answer. A motion of an amicus curiae to participate in the oral argument will be granted only for extraordinary reasons, or on the Court's own motion.

Rule 30 APPENDIX TO THE BRIEFS. Whenever the record on appeal, or the transcripts are particularly voluminous, the Court may order the appellant to prepare, with notice and consultation by the appellee, an appendix to the briefs which shall contain the papers, documents, and portions of the transcript necessary to the determination of the issues presented on appeal. The preparation of an appendix does not prevent further referrals to the original record by any party or the Court. A party may append pertinent parts of the record to his/her brief when such is necessary for a clear presentation of the issues raised on appeal.

Rule 31 FILING AND SERVICE OF BRIEFS.

a. Time for serving and filing briefs. The appellant shall serve and file his/her brief within twenty (20) days after the date on which the completed record is received and filed in the Supreme Court, and this motion constitutes leave therefor. The appellee shall serve and file his/her brief within twenty (20) days after service of the brief of the appellant. The appellant may serve and file a reply brief within fourteen (14) days after service of the brief of the appellee, but except for good cause shown, a reply brief must be filed at least three (3) days before argument.

b. Number of copies to be filed and served. Three (3) copies of each brief shall be filed with the clerk in addition to the original, unless the Court by order in a particular case shall direct a lesser or greater number, and two (2) copies shall be served on counsel for each party separately represented.

c. Consequence of failure to file briefs. If an appellant fails to file his/her brief within the time provided by this Rule, or within the time as extended, an appellee may move for dismissal of the appeal. If an appellee fails to file his/her brief, he/she will not be heard at oral argument except by permission of the Court.

Rule 32 FORM OF BRIEFS, THE APPENDIX, AND OTHER PAPERS.

a. Form of briefs and appendices. Briefs and appendices may be produced in standard typographic printing or by any duplicating or copying process which produces a clear black image on white paper, including legible photocopies. Carbon copies of briefs and appendices may not be submitted without permission of the Court, except in behalf of parties allowed to proceed in forma pauperis. All printed matter must appear in at least 11 point type on opaque, unglazed paper. Briefs and appendices produced by the standard typographic process shall be bound in volumes having pages 6 1/8 by 9 1/4 inches and type matter 4 1/6 by 7 1/6 inches. Those produced by any other process shall be bound in volumes having pages not exceeding 8 1/2 by 11 inches and type matter not exceeding 6 1/2 by 9 1/2 inches, with double spacing between each line of text, except that quoted matter may be single spaced. Copies of the reporter's transcript and other papers reproduced in a manner authorized by this Rule may be inserted in the appendix; such pages may be informally renumbered if necessary.

   If briefs are produced by commercial printing or duplicating firms, or, if produced otherwise and the covers to be described are available, the cover of the brief of the appellant should be blue; that of the appellee, red; that of an intervenor or amicus curiae, green; that of any reply brief, gray. The cover of the appendix, if separately printed, should be white. The front covers of the briefs and of appendices shall contain:

   1. The name of the court and the number of the case;
   2. The title of the case (see Rule 12(a));
   3. The nature of the proceedings in the court (e.g., Appeal; Petition for Review) and the name of the court below;

4. The title of the document (e.g. Brief of Appellant, Appendix); and
5. The names and addresses of counsel representing the party on whose behalf the document is filed.

b. Form of other papers. Petitions for rehearing shall be produced in a manner prescribed by subdivision (a). Motions and other papers may be produced in a like manner, or they may be typewritten upon opaque, unglazed paper 8 1/2 by 11 inches in size. Lines of typewritten text shall be double spaced. Consecutive sheets shall be attached at the left margin. Carbon copies may be used for filing and service if they are legible.

A motion or other paper addressed to the Court shall contain a caption setting forth the name of the court, the title of the case, the file number, and a brief descriptive title indicating the purpose of the paper.

Rule 33 PREHEARING CONFERENCE. The Court may direct the attorneys for the parties to appear before the Court or a judge thereof for a prehearing conference to consider the simplification of the issues and such other matters as may aid in the disposition of the proceeding by the Court. The Court or judge shall make an order which recites the action taken at the conference and the agreements made by the parties as to any of the matters considered and which limits the issues to those not disposed of by admissions or agreements of counsel, and such order when entered controls the subsequent course of the proceeding, unless modified to prevent manifest injustice.

Rule 34 ORAL ARGUMENT.

a. In general; local rule. Oral argument shall be allowed in all cases unless the Court, after examination of the briefs and record, shall be unanimously of the opinion that oral argument is not needed. In such cases, the Court shall notify the parties of its intention to proceed without oral argument, and shall provide any party with an opportunity to file a statement setting forth the reasons why, in his/her opinion, oral argument should be heard. Oral argument will be allowed upon request unless the Court unanimously determines:
   1. The appeal is frivolous; or
   2. The dispositive issue or set of issues has been recently authoritatively decided; or
   3. The facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.

b. Notice of argument; postponement. The clerk shall advise all parties whether oral argument is to be heard, and if so, of the time and place therefor, and the time to be allowed each side. A request for postponement of the argument or for allowance of additional time must be made by motion filed reasonably in advance of the date fixed for hearing.

c. Order and content of argument. The appellant is entitled to open and conclude the argument. The opening argument shall include a fair statement of the case. Counsel will not be permitted to read at length from briefs, records or authorities.

d. Cross and separate appeals. A cross or separate appeal shall be argued with the initial appeal at a single argument, unless the Court otherwise directs. If a case involves a cross-appeal, the plaintiff in the action below shall be deemed the appellant for the purpose of this Rule unless the parties otherwise agree or the Court otherwise directs. If separate appellants support the same argument, care should be taken to avoid duplication of argument.

e. Non-appearance of parties. If the appellee fails to appear to present argument, the Court will hear argument on behalf of the appellant, if present. If the appellant fails to appear, the Court may hear argument on behalf of the appellee, if his/her counsel is present. If neither party appears, the case will be decided on the briefs unless the Court shall otherwise order.

f. Submission on briefs. By agreement of the parties, a case may be submitted for decision on the briefs, but the Court may direct that the case be argued.

g. Use of physical exhibits at argument; removal. If physical exhibits other than documents are to be used at the argument, counsel shall arrange to have them placed in the courtroom before the court convenes on the date of the argument. After the argument, counsel shall cause the exhibits to be removed from the courtroom unless the court otherwise directs. If exhibits are not reclaimed by counsel within a reasonable time after notice is given by the clerk, they shall be destroyed or otherwise disposed of as the clerk shall think best.

Rule 35 DETERMINATION OF CAUSES BY THE COURT EN BANC.

a. When a hearing or rehearing en banc will be ordered. A majority of the judges of the Court who are in regular active service may order that any motion or other proceeding be heard or reheard by the Supreme Court en banc. Such hearing or rehearing is not favored and ordinarily will not be ordered except (1) when consideration by the full Court is necessary to secure or maintain uniformity of its decision, or (2) when the proceedings involve a question of exceptional importance.

b. Suggestion of a party for hearing or rehearing en banc. A party may suggest the appropriateness of a hearing or rehearing en banc. No response shall be filed unless the Court shall so order. The clerk shall transmit any such suggestion to the judges of the Court who are in regular active service, but a vote need not be taken to determine whether the cause shall be heard or reheard en banc unless a judge in regular active service or the judge who rendered a decision sought to be reheard requests a vote on such a suggestion made by a party.

c. Time for suggestion of a party for hearing or rehearing en banc; suggestion does not stay mandate. If a party desires to suggest that a motion or proceeding be heard initially en banc, the suggestion must be made by the date on which the appellee's brief is filed. A suggestion for rehearing a motion en banc must be made within ten (10) days after notice of the decision of the judge initially hearing the motion. The pendency of such a suggestion, whether or not included in a petition for rehearing, shall not affect the finality of the judgment of the Supreme Court or stay the issuance of the mandate.

Rule 36 ENTRY OF JUDGMENT. The notation of a judgment in the docket constitutes entry of the judgment. The clerk shall prepare, sign and enter the judgment following receipt of the opinion of the court unless the opinion directs settlement of the form of the judgment, in which event the clerk shall prepare, sign, and enter the judgment following final settlement by the Court. If a judgment is rendered without an opinion, the clerk shall prepare, sign and enter the judgment following instruction from the court. The clerk shall, on the date judgment is entered, mail to all parties a copy of the opinion, if any, or of the judgment if no opinion was written, and notice of the date of entry of the judgment.

Rule 37 INTEREST ON JUDGMENTS. Unless otherwise provided by law, if a judgment for money in a civil case is affirmed, whatever interest is allowed by law shall be payable from the date the judgment was entered in the Tribal Court. If a judgment is modified or reversed with a direction that a judgment for money be entered in the Tribal Court, the mandate shall contain instruction with respect to allowance of interest.

Rule 38 DAMAGES FOR DELAY. If the Supreme Court shall determine that an appeal is frivolous, it may award just damages and single or double costs to the appellee.

Rule 39 COSTS.

a. To whom allowed. Except as otherwise provided by law, if an appeal is dismissed, costs shall be taxed against the appellant unless otherwise agreed by the parties or ordered by the Court; if a judgment is affirmed, costs shall be taxed against the appellant unless otherwise ordered; if a

judgment is reversed, costs shall be taxed against the appellee unless otherwise ordered; if a judgment is affirmed or reversed in part, or is vacated, costs shall be allowed only as ordered by the Court.

b. Costs for or against the Winnebago Tribe. In cases involving the Winnebago Tribe or an agency or officer thereof, if an award of costs against or for the Winnebago Tribe is authorized by Tribal statute, costs shall be awarded in accordance with the provisions of subdivision (a); otherwise, costs shall not be awarded for or against the Winnebago Tribe of Nebraska or its agencies or officers in their official capacity.

c. Costs of briefs, appendices, and copies of records. Unless otherwise provided by Tribal statute or Court rule, the cost of printing, or otherwise producing necessary copies of briefs, appendices, and copies of records authorized by Rule 30 shall be taxable in the Supreme Court at rates not higher than those generally charged for such work within the reservation.

d. Bill of costs; objection; costs inserted in mandate or added later. A party who desires such costs to be taxed shall state them in an itemized and verified bill of costs which he/she shall file with the clerk, with proof of service, within fourteen (14) days after the entry of judgment. Objections to the bill of costs must be filed within ten (10) days of service on the party against whom costs are to be taxed unless the time is extended by the Court. The clerk shall prepare and certify an itemized statement of costs taxed in the Supreme Court for insertion in the mandate, but the issuance of the mandate shall not be delayed for taxation of costs, and if the mandate has been issued before final determination of costs, the statement, or any amendment thereof, shall be added to the mandate upon request by the clerk of the Supreme Court to the clerk of the Tribal Court.

e. Costs on appeal taxable in the Tribal Court. Costs incurred in preparation and transmission of the record, the cost of the reporter's transcript, if necessary for the determination of the appeal, the premiums paid for cost of supersedeas bonds or other bonds to preserve rights pending appeal, and the fee for filing the notice of appeal shall be taxed in the Tribal Court as costs of the appeal in favor of the party entitled to costs under this Rule.

Rule 40 PETITION FOR REHEARING.

a. Time for filing, content, answer, action by court. A petition for rehearing may be filed within fourteen (14) days after entry of judgment unless the time is shortened or enlarged by order of the Court. The petition shall state with particularity the points of law or fact which, in the opinion of the petitioner, the Court has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires to present. Oral argument in support of the petition will not be permitted except upon the Court's own motion. No answer to a petition for rehearing will be received unless requested by the Court, but a petition for rehearing will ordinarily not be granted in the absence of such a request. If a petition for rehearing is granted the Court may make a final disposition of the case without reargument or may restore it to the calendar for reargument or resubmission or may make such other orders as are deemed appropriate under the circumstances of the particular case.

Rule 41 ISSUANCE OF MANDATE. The mandate of the Court shall issue twenty-one (21) days after the entry of judgment unless the time is shortened or enlarged by order. A certified copy of the judgment and a copy of the opinion of the Court, if any, and any direction as to costs shall constitute the mandate, unless the Court directs that a formal mandate issue. The timely filing of a petition for rehearing will stay the mandate until disposition of the petition unless otherwise ordered by the Court. If the petition is denied, the mandate shall issue seven (7) days after entry of the order denying the petition unless the time is shortened or enlarged by order.

Rule 42 VOLUNTARY DISMISSAL.

a. Dismissal in the Tribal Court. If an appeal has not been docketed, the appeal may be dismissed by the Tribal Court upon the filing in that court of a stipulation for dismissal signed by all the parties, or upon motion and notice by the appellant.

b. Dismissal in the Supreme Court. If the parties to an appeal or other proceeding shall sign and file with the clerk of the Supreme Court an agreement that the proceeding be dismissed, specifying the terms as to payment of costs, and shall pay whatever fees are due, the clerk shall enter the case dismissed, but no mandate or other process shall issue without an order of the Court. An appeal may be dismissed on motion of the appellant upon such terms as may be agreed upon by the parties or fixed by the Court.

Rule 43 SUBSTITUTION OF PARTIES.

a. Death of a party. If a party dies after a notice of appeal is filed or while a proceeding is otherwise pending in the Supreme Court, the personal representative of the deceased party may be substituted as a party on motion filed by the representative or by any party with the clerk of the Court. The motion of a party shall be served upon the representative in accordance with the provisions of Rule 25. If the deceased party has no representative, any party may suggest the death on the record and proceedings shall then be had as the Supreme Court may direct. If a party against whom an appeal may be taken dies after entry of a judgment or order in the Tribal Court but before the notice of appeal is filed, an appellant may proceed as if death had not occurred. After the notice of appeal is filed, substitution shall be effected in the Supreme Court in accordance with this subdivision. If a party entitled to appeal shall die before filing a notice of appeal, the notice of appeal may be filed by his/her attorney of record within the time prescribed by these Rules. After the notice of appeal is filed, substitution shall be effected in the Supreme Court in accordance with this subdivision.

b. Substitution for other causes. If substitution of a party in the Supreme Court is necessary for any reason other than death, substitution shall be effected in accordance with the procedure prescribed in subdivision (a).

c. Public officer; death or separation from office.

1. When a public officer is a party to an appeal or other proceeding in the Supreme Court in his/her official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and his/her successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

2. When a public officer is a party to an appeal or other proceeding in his/her official capacity, he/she may be described as a party by his/her official title rather than by name; but the Court may require that his/her name be added.

Rule 44 CASES INVOLVING CONSTITUTIONAL OR INDIAN CIVIL RIGHTS ACT QUESTION WHERE THE WINNEBAGO TRIBE IS NOT A PARTY. It shall be the duty of a party who draws a question of the constitutionality (or unlawfulness under the Indian Civil Rights Act of 1968) of any statute, ordinance, or other action of the Tribal Council in any proceeding in the Supreme Court to which the Tribe, or any agency, officer, or employee thereof in their official capacity is not a party, upon the filing of the record, or as soon thereafter as the question is raised in the Supreme Court, to give immediate notice in writing to the Court of the existence of said question. The clerk shall thereupon certify such fact to the Tribal attorney and/or Tribal prosecutor who may intervene upon such question upon motion.

TITLE 1
ARTICLE 4
COUNSELORS AND PROFESSIONAL ATTORNEYS

1-400 Lay counsel.
1-401 Right to be represented by an attorney.
1-402 Eligibility for admission.
1-403 Procedure for admission.
1-404 Disbarment and discipline.
1-405 Standards of conduct and obligations for attorneys and lay counsel.
1-406 Oath of attorneys and lay counselors.

1-400 Lay counsel.

1. Any person appearing as a party in any judicial proceeding before a Court of the Winnebago Tribe of Nebraska shall have the right to be represented by a lay counsel (not a professional attorney) and to have such person assist in the preparation and presentation of his/her case.
2. The Tribe shall have no obligation to provide or pay for such lay counselors, and such obligation shall rest entirely with the person desiring such a counselor.
3. Any person appearing as lay counselor shall be subject to the same ethical obligations of honesty and confidentiality towards his/her client and the Court as would a professional attorney, and the attorney-client testimonial privilege shall apply in appropriate circumstances.
4. Lay counselors shall be deemed officers of the Court for purposes of their representation of a party and shall be subject to the disciplinary authority of the Court in all matters relating to their representative capacity.
5. Lay counselors must meet the minimum requirements of the Bar of the Winnebago Tribal Court as set forth in Section 1-402(2). [TCR 86-79]

1-401 Right to be represented by an attorney. Any person appearing as a party in any civil or criminal action shall have the right to be represented by a professional attorney or lay counsel of his/her own choice and at his/her own expense; provided, however that the Tribe has no obligation to provide or pay for such an attorney; provided further, that any such attorney or counsel appearing before Courts of the Tribe shall have first obtained admission to practice before such Court in accordance with the procedures set forth herein. [TCR 86-79]

1-402 Eligibility for admission.

1. Any attorney who is an active member in good standing of any State bar or Bar of the District of Columbia is eligible for admission to practice before the Courts of the Winnebago Tribe of Nebraska, if he/she follows the procedures for admission as set out in Section 1-403.
2. Any person who has successfully completed a certified paralegal training program is also eligible for admission to practice before the Courts of the Winnebago Tribe of Nebraska, if they follow the procedure for admission as set out in Section 1-403 and meet minimum requirements of this Section. [TCR 86-79]

1-403 Procedure for admission.

1. The clerk shall prepare and maintain on file blank copies of application for admission to practice before the Winnebago Tribal Court System. The application shall provide simple written instructions and shall set out in full an oath which must be signed by the attorney or lay counsel in the presence of a notary public.

2. Any professional attorney or lay counsel desiring to be admitted to the practice before the Winnebago Tribal Court System shall complete and submit an application for admission certifying under oath:
   a. That he/she meets the requirements of Section 1-402 of this Code, and appending thereto a current bar admission card or letter from a State bar association or District of Columbia Association evidencing his/her admission to a good standing therein, or evidence of graduation from a certified paralegal training program.
   b. That he/she has taken the required oath as set out in the application.
3. An admission fee of fifty dollars ($50.00) shall be tendered with the application subject to return if the application is denied. This is an annual fee to be paid each year by the attorney or lay counsel. The admission fee shall be waived for the General Counsel and/or Attorney General of the Winnebago Tribe of Nebraska.
4. Upon receipt of an application for admission to practice before the Courts of the Winnebago Tribe of Nebraska, the chief judge shall review the application and may, but need not, investigate the truth of the matters contained therein. If the applicant meets the qualifications set forth herein, the chief judge shall cause a certificate to be issued evidencing the admission of the applicant to practice before the Courts of the Winnebago Tribe of Nebraska.
5. Any person denied admission shall have a right to appeal in writing directly to the Tribal Council which may conduct such inquiry or proceedings on the matter as it deems appropriate. [TCR 96-22]

1-404 Disbarment and discipline.

1. Whenever any professional attorney admitted to practice before the Winnebago Tribal Court has been disbarred or suspended from the practice of law in any state to which reference for admission to practice was made as a condition to obtaining admission to practice before the Tribal Courts, the chief judge shall immediately send notice to his/her last known address that he/she shall be suspended from practice before the Courts of the Tribe for an indefinite period unless he/she shall appear or otherwise answer within thirty days showing good cause why such order should not be entered. The attorney may also be suspended from further appearances for misconduct or improper behavior by any judge of the Tribal Court upon conditions of notice and hearing.
2. Any person appearing as lay counsel for another may be suspended from further appearances as such for misconduct or improper behavior by any judge of the Tribal Court upon conditions of notice and hearing. [TCR 86-79]

1-405 Standards of conduct and obligations for attorneys and lay counsel.

1. Every attorney admitted to practice before the Courts of the Tribe, and every lay counsel employed or appointed to represent another before such Courts when acting in such capacity or in matters in any relation thereto, shall conform his/her conduct in every respect to the requirements and suggested behavior of the Code of Professional Responsibility as adopted by the American Bar Association.
2. Both professional attorneys and lay counselors who hold themselves out as being available to act as such have a responsibility to accept as client and represent without compensation or without full compensation such persons as a judge of a Tribal Court feels have particular urgent needs for such representation but are personally unable to afford such legal help. Professional attorneys and lay counselors will be appointed if needed to represent individual clients on a free basis or on a reduced fee basis as part of the admission requirements. Provided that no person shall be obliged by this provision or otherwise to provide more than fifteen hours of free legal services during any twelve month period. [TCR 86-79]

1-406 Oath of attorneys and lay counselors. Upon applying for admission to practice as provided herein, an attorney shall take the following oath by subscribing his/her signature to such oath on the application:

> I do solemnly swear (affirm):
>
> That I will support the Constitution of the United States and support and defend the Constitution and By-laws, and laws of the Winnebago Tribe of Nebraska; that I will maintain the respect due the Courts and judicial officers of the Winnebago Tribe of Nebraska;
>
> That I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor maintain any defense except such as I believe to be honestly debatable under the law of the land;
>
> That I will employ for such purposes of maintaining the cause confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice, or false statement of fact or law. [TCR 86-79]

TITLE 1
ARTICLE 5
CONTEMPTS

1-500 Acts or failures to act which contribute contempt of Court.
1-501 Civil contempt.
1-502 Criminal contempt.
1-503 Contempt procedure.

1-500 Acts or failures to act which constitute contempt of Court. The following acts or failures to act may serve as the basis for finding an individual or other entity in contempt of Court:

1. Disorderly, contemptuous, or insulting behavior toward a judge while holding Court, which tends to interrupt the course of the proceedings or undermines the dignity of the Court.
2. A breach of the peace, or loud boisterous conduct which tends to interrupt the course of a judicial proceeding.
3. Deceit, or abuse of process or proceedings of the Court by a party or counselor to a judicial proceeding.
4. Disobedience to a lawful judgment, order or process of the Court.
5. Assuming to be an officer, spokesman or other official of the Court and acting as such without authority.
6. Rescuing or taking any person or property from the Court or an officer acting under Court order, contrary to the order of the Court.
7. Unlawfully detaining or other interfering with a witness or party to an action while such person is going to or from a Court proceeding or attending Court.
8. Disobedience of a subpoena duly served, or refusing to be sworn or answer as a witness.
9. Any other interference with the process, proceeding, or dignity of the Court or of a judge of the Court while in the performance of his/her official duties occurring while any Court hearing is in actual session. [TCR 86-79]

1-501 Civil contempt.

1. A civil contempt is prosecuted to preserve, protect, enforce or restore the duly adjudicated rights of a party to a civil action against one under legal obligation to do or refrain from doing something as a result of a judicial decree or order.
2. Relief in a civil contempt proceeding may be coercive or compensatory in nature as to the complaining party and may include a fine payable to the Court or to the complaining party or imprisonment of the party in contempt to secure compliance, or both. [TCR 86-79]

1-502 Criminal contempt.

1. Conduct which is directed at, or is detrimental to, the dignity and authority of the Court is a criminal contempt.
2. Criminal contempt is an offense which may be punishable, at the discretion of the Court based on the nature of the conduct in question, with a fine of up to five hundred dollars ($500.00) and/or up to six months in jail. [TCR 86-79]

1-503 Contempt procedure.

1. A direct contempt is one committed in the presence of the Court or so near thereto as to be disruptive of the Court proceedings, and such may be adjudged and punished summarily.

2. All other contempts shall be determined at a hearing at which the person accused of contempt is given notice and an opportunity to be heard. [TCR 86-79]

TITLE 1
ARTICLE 6
SELECTION OF JURORS

1-600 Eligibility for jury selection.
1-601 Jury lists.
1-602 Jury panel selection procedures.
1-603 Power to excuse jurors.
1-604 Compensation to jurors.

1-600 Eligibility for jury duty.

1. Any enrolled member of the Winnebago Tribe of Nebraska eighteen years or older, who has not been convicted of a felony or a Class I offense under this Code, and who resides on the Winnebago Indian reservation, shall be eligible to be a juror. Judges, other officers or employees of the Court, attorneys, lay counselors, and current Tribal Council members shall not be eligible to be jurors.
2. The chief judge may adopt procedures whereby non-enrolled Indians and non-Indians may be summoned for jury duty in cases in which one or more non-Indian participants are involved. [TCR 86-79, 05-111]

1-601 Jury lists. Each year, the clerk of Courts, at the direction of the Tribal Court, shall prepare a list of eligible jurors, which list shall contain not less than fifty names and which shall contain the names of persons appearing on the Tribal enrollment lists as well as other lists which would fairly represent those individuals living upon the reservation who are eligible to serve as jurors. [TCR 86-79]

1-602 Jury panel selection procedures.

1. The clerk shall subpoena not less than twenty persons from the list of eligible jurors to appear and be available to serve as jurors whenever a jury trial is scheduled in a civil or criminal matter.
2. The selection from the list of eligible jurors shall be by lot or some other means of random, impartial selection.
3. Selection of jurors to hear the case shall be accomplished as provided in the Rules of Civil and Criminal Procedures elsewhere in this Code. [TCR 86-79]

1-603 Power to excuse jurors. Only the judge assigned to hear a case shall have the power to excuse a person subpoenaed to appear as a juror and may do so on account of sickness, disability, extreme hardship, or other good cause shown upon the request for such excusal by the person subpoenaed.
[TCR 86-79]

1-604 Compensation to 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 service and/or mileage, if any, as the Tribal Court shall establish by Rule of the Court, consistent with available funds. [TCR 86-79]

TITLE I
ARTICLE 7
JUDICIAL CONDUCT

1-700 Adoption of Code of Judicial Conduct.
1-701 Canon 1.
1-702 Canon 2.
1-703 Canon 3.
1-704 Canon 4.
1-705 Canon 5.
1-706 Canon 6.
1-707 Canon 7.
1-708 Compliance with Code of Judicial Conduct.

1-700 Adoption of Code of Judicial Conduct. The Winnebago Tribe of Nebraska hereby adopts the Code found in Sections 1-701, et seq., of this Article to be adhered to by all judicial officers of the Court. Judicial officer is defined as all judges, magistrates, referees, and includes anyone who is engaged in the duties of a judge. [TCR 86-79]

1-701 Canon l. A Judge Should Uphold the Integrity and Independence of the Judiciary. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should him/herself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective. [TCR 86-79]

1-702 Canon 2. A Judge Should Avoid Impropriety and the Appearance of Impropriety in All his/her Activities.

A. A judge should respect and comply with the law and should conduct him/herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow his/her family, social, or other relationships to influence his/her judicial conduct or judgment. He/she should not lend the prestige of his/her office to advance the private interest of others; nor should he/she convey or permit others to convey the impression that they are in a special position to influence him/her. He/she should not testify voluntarily as a character witness.

Commentary

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. He/she must expect to be the subject of constant public scrutiny. He/she must therefore accept restrictions on his/her conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. The testimony of a judge as a character witness injects the prestige of his/her office into the proceeding in which he/she testifies and may be misunderstood to be an official testimonial. This Canon, however, does not afford him/her a privilege against testifying in response to an official summons. [TCR 86-79]

1-703 Canon 3. A Judge Should Perform the Duties of his/her Office Impartially and Diligently. The judicial duties of a judge take precedence over all his/her other activities. His/her judicial duties include all duties of his/her office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities

1. A judge should be faithful to the law and maintain professional competence in it. He/she should be unswayed by partisan interests, public clamor, or fear of criticism.
2. A judge should maintain order and decorum in proceedings before him/her.

3. A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he/she deals in his/her official capacity, and staff, Court officials, and others subject to his/her direction and control.

   Commentary

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

4. A judge should accord to every person who is legally interested in a proceeding, or his/her lawyer, the full right to be heard according to law, and, except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding. A judge, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before him/her if he/she gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

   Commentary

   The prescription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted. It does not preclude a judge from consulting with other judges, or with Court personnel whose function is to aid the judge in carrying out his/her adjudicative responsibilities. An appropriate and often desirable procedure for a Court to obtain the advice of a disinterested expert on legal issues is to invite him/her to file a brief Amicus Curiae.

5. A judge should dispose promptly of the business of the Court.

   Commentary

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

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

   Commentary

   "Court personnel" does not include the lawyers in a proceeding before a judge. The conduct of lawyers is governed by DR7-107 of the Code of Professional Responsibility.

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

B. Administrative Responsibilities.

1. A judge should diligently discharge his/her administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative response abilities of other judges and Court officials.
2. A judge should require his/her staff and Court officials subject to his/her direction and control to observe the standards of fidelity and diligence that apply to him/her.

3. A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

   Commentary

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

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

   Commentary

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

C. Disqualification.

1. A judge should disqualify him/herself in a proceeding in which his/her impartiality might reasonably be questioned, including but not limited to instances where:

   a. He/she has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding.

   b. He/she served as lawyer in the matter in controversy, or a lawyer with whom he/she previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it.

      Commentary

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

   c. He/she knows that he/she, individually or as a fiduciary, or his/her spouse or minor child residing in his/her household, has a financial interest in the subject matter controversy or in a party to the proceeding or any other interest that could be substantially affected by the outcome of the proceeding.

   d. He/she or his/her spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

      i. is a party to the proceeding, or an officer, director, or trustee of a party;

      ii. is acting as a lawyer in the proceeding;

         Commentary

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

      iii. is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

      iv. is to the judge's knowledge likely to be a material witness in the proceeding.

2. A judge should inform him/herself about his/her personal and fiduciary financial interests, and make a reasonable effort to inform him/herself about the personal financial interests of his/her spouse and minor children residing in his/her household.
3. For the purposes of this Section;
   a. the degree of relationship is calculated according to the civil law system;
      Commentary
      According to the civil law system, the third degree of relationship test would, for example, disqualify the judge if his/her or his/her spouse's father, grandfather, uncle, brother, or niece's husband were a party or lawyer in the proceeding but would not disqualify him/her if a cousin were a party or lawyer in the proceeding.
   b. "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;
   c. "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:
      i. ownership in a mutual or common investment fund that holds securities is not a financial interest in such securities unless the judge participates in the management of the fund;
      ii. an office in an educational, religious, charitable, fraternal, or civic organization is not a financial interest in securities held by the organization;
      iii. the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a financial interest in the organization only if the outcome of the proceeding could substantially affect the value of the interest;
      iv. ownership of government securities is a financial interest in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.
   d. Remittal of Disqualification. A judge disqualified by the terms of Canon 3C(l)(C) or Canon 3C(l)(d) may, instead of withdrawing from the proceeding, disclose on the record the basis of his/her qualifications. If, based on such disclosure, the parties and lawyer, independently of the judge's participation, all agree in writing that the judge's relationship is immaterial or that his/her financial interest is insubstantial, the judge is no longer disqualified, and may participate in the proceeding. The agreement, signed by all parties and lawyers, shall be incorporated in the record of the proceeding.
      Commentary
      This procedure is designed to minimize the chance that a party or lawyer will feel coerced into an agreement. When a party is not immediately available, the judge without violating this Section may proceed on the written assurance of the lawyer that his/her party's consent will subsequently be filed. [TCR 86-79]

1-704 Canon 4. A Judge May Engage in Activities to Improve the Law, the Legal System, and Administration of Justice. A judge, subject to the proper performance of his/her judicial duties, may engage in the following quasi-judicial activities, if in doing so he/she does not cast doubt on his/her capacity to decide impartially any issue that may come before him/her:

A. He/she may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

B. He/she may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and he/she may otherwise consult with an executive or legislative body or officials, but only on matters concerning the administration of justice.

C. He/she may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. He/she may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. He/she may make recommendations to public and private fund granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

Commentary

As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that his/her time permits, he/she is encouraged to do so, either independently or through a bar association, judicial conference, or organization dedicated to the improvement of the law. [TCR 86-79]

1-705 Canon 5. A Judge Should Regulate his/her Extra-Judicial Activities To Minimize the Risk of Conflict with his/her Judicial Duties.

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

Commentary

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

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

1. A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before him/her or will be regularly engaged in adversary proceedings in any Court.

   Commentary

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

2. A judge should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of his/her office for the purpose, but he/she may be listed as an officer, director, or trustee of such an organization. He/she should not be a speaker or the guest of honor at an organization's fund-raising events, but he/she may attend such events.

3. A judge should not give investment advice to such an organization, but he/she may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

   Commentary

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

C. Financial Activities.

1. A judge should refrain from financial and business dealings that tend to reflect adversely on his/her impartiality, interfere with the proper performance of his/her judicial duties, exploit his/her judicial position, or involve him/her in frequent transactions with lawyers or persons likely to come before the Court on which he/she serves.

   Commentary

   The Effective Date of Compliance provision of this Code qualifies this subsection with regard to a judge engaged in a family business at the time this Code becomes effective.

2. Subject to the requirement of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity including the operation of a business.
3. A judge should manage his/her investments and other financial interest to minimize the number of cases in which he/she is disqualified. As soon as he/she can do so without serious financial detriment, he/she should divest him/herself of investments and other financial interests that might require frequent disqualification.
4. Neither a judge nor a member of his/her family residing in his/her household should accept a gift, bequest, favor, or loan from anyone except as follows:
   a. a judge may accept a gift incident to public testimonial to him/her; books supplied by publishers on a complimentary basis for official use; or an invitation to the judge and his/her spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice;
   b. a judge or a member of his/her family residing in his/her household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same term applied to other applicants;
   c. a judge or a member of his/her family residing in his/her household may accept any other gift, bequest, favor, or loan *only* if the donor is not a party or other person whose interests have come or are likely to come before him/her, and, if its value exceeds one hundred dollars ($100.00), the judge reports it in the same manner as he/she reports compensation in Canon 6C.

      Commentary

      This subsection does not apply to contributions to a judge's campaign for judicial office, a matter governed by Canon 7.
5. For the purposes of this Section, member of his/her family residing in his/her household means any relative of a judge by blood or marriage, or a person treated by a judge as a member of his/her family, who resides in his/her household.
6. A judge is not required by this Code to disclose his/her income, debts, or investments, except as provided in this Canon and Canons 3 and 6.

   Commentary

   Canon 3 requires a judge to disqualify him/herself in any proceeding in which he/she has a financial interest, however small; Canon 5 requires a judge to refrain from engaging in business and from financial activities that might interfere with impartial performance of his/her judicial duties; Canon 6 requires him/her to report all compensation he/she receives for activities outside his/her judicial office. A judge has the rights of an ordinary

citizen, including the right to privacy of his/her financial affairs, except to the extent that limitations thereon are required to safeguard the proper performance of his/her duties. Owning and receiving income from investments do not as such affect the performance of a judge's duties.

D. Fiduciary Activities. A judge should not serve as the executor, administrator, trustee, guardian, or other fiduciary, except for the estate, trust, or person of a member of his/her family, and then only if such service will not interfere with the proper performance of his/her judicial duties. [Member of his/her family includes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close family relationship.] As a family fiduciary, a judge is subject to the following restrictions:

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

   Commentary

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

2. While acting as a fiduciary, a judge is subject to the same restriction on financial activities that apply to him/her in his/her personal capacity.

   Commentary

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

E. Arbitration. A Judge Should Not Act as an Arbitrator or Mediator.

F. Extra-judicial Appointments. A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his/her country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

   Commentary

   Valuable services have been rendered in the past to the states and the nation by judges appointed by the executive to undertake important extra-judicial assignments. The appropriateness of conferring these assignments on judges must be reassessed, however, in light of the demands on judicial manpower created by today's crowded dockets and the need to protect the Courts from involvement in extra-judicial matters that may prove to be controversial. Judges should not be expected or permitted to accept governmental appointments that could interfere with the effectiveness and independence of the judiciary. [TCR 86-79]

1-706 Canon 6. A Judge Should Regularly File Reports of Compensation Received for Quasi-Judicial and Extra-Judicial Activities. A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in his/her judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

A. Compensation. Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.

B. Expense Reimbursement. Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his/her spouse. Any payment in excess of such an amount is compensation.

C. Public Reports. A judge should report the date, place, and nature of any activity for which he/she received compensation, and the name of the payer and the amount of compensation so received. Compensation or income of a spouse attributed to the judge by operation of a community property law is not extra-judicial compensation to the judge. His/her report should be made at least annually and should be filed as a public document in the office of the clerk of the Court on which he/she serves or other office designated by rule of Court. [TCR 86-79]

1-707 Canon 7. A Judge Should Refrain from Political Activity inappropriate to his/her Judicial Office.

A. Political Conduct in General.

1. A judge or a candidate for election to judicial office should not:
   a. act as a leader or hold any office in a political organization;
   b make speeches for a political organization or candidate or publicly endorse a candidate for public office;
   Commentary
   A candidate does not publicly endorse another candidate for public office by having his/her name on the same ticket.
   c. solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions, except as authorized in subsection A(2).
2. A judge holding an office filled by public election between competing candidates, or a candidate for such office, may, only insofar as permitted by law, attend political gatherings, speak to such gatherings on his/her own behalf when he/she is a candidate for election or re-election, identify him/herself as a member of a political party, and contribute to a political party or organization.
3. A judge should resign his/her office when he/she becomes a candidate either in a party primary or in a general election for a non-judicial office, except that he/she may continue to hold his/her judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if he/she is otherwise permitted by law to do so.
4. A judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.

B. Campaign Conduct.

1. A candidate, including an incumbent judge, for a judicial office that is filled either by public election between competing candidates or on the basis of a merit system election:
   a. should maintain the dignity appropriate to judicial office, and should encourage members of his/her family to adhere to the same standards of political conduct that apply to him/her;
   b. should prohibit public officials or employees subject to his/her direction or control from doing for him/her what he/she is prohibited from doing under this Canon; and except to the extent authorized under subsection B(2) or B(3), he/she should not allow any other person to do for him/her what he/she is prohibited from doing under this Canon;
   c. should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his/her views on disputed legal or political issues; or misrepresent his/her identity, qualifications, present position, or other fact.
2. A candidate, including an incumbent judge, for a judicial office that is filled by public election between competing candidates should not his/herself solicit or accept campaign

funds, or solicit publicly stated support, but he/she may establish committees of responsible persons to secure and manage the expenditure for his/her campaign and to obtain public statements of support from lawyers. A candidates committee may solicit funds for his/her campaign no earlier than ninety days before a primary election and no later than ninety days after the last election in which he/she participates during the election year. A candidate should not use or permit the use of campaign contributions for the private benefit of him/herself or members of his/her family.

Commentary

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

3. An incumbent judge who is a candidate for retention in or re-election to office without a competing candidate, and whose candidacy has drawn active opposition, may campaign in response thereto and may obtain publicly stated support and campaign funds in the manner provided in subsection B(2). [TCR 86-79]

1-708 Compliance with the Code of Judicial Conduct. Anyone, whether or not a lawyer, who is an officer of a judicial system performing judicial functions, including an officer such as a referee in bankruptcy, special master, Court commissioner, or magistrate, is a judge for the purpose of this Article except as provided below.

A. Part-time Judges. A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge. A part-time judge:
   1. Is not required to comply with Canon 5C(2), D, E, F, and G, and Canon 6C;
   2. Should not practice law in the Court on which he/she serves or in any Court subject to the appellate jurisdiction of the Court on which he/she serves, or act as a lawyer in a proceeding in which he/she has served as a judge or in any other proceeding related thereto.

B. Judge Pro Temper. A judge pro tempore is a person who is appointed to act temporarily as a judge.
   1. While acting as such, a judge pro tempore is not required to comply with Canon 5C(2), (3), D, E, F, and G, and Canon 6C.
   2. A person who has been a judge pro tempore should not act as a lawyer in a proceeding in which he/she has served as a judge or in any other proceeding related thereto.

C. Retired Judge. A retired judge who receives the same compensation as a full-time judge on the Court from which he/she retired and is eligible for recall to judicial service should comply with all the provisions of this Code except Canon 5G, but he/she should refrain from judicial service during the period of an extra-judicial appointment not sanctioned by 5G. All other retired judges eligible for recall to judicial service should comply with the provisions of this Code governing part-time judges.

Effective Date of Compliance

A person to whom this Code becomes applicable should arrange his/her affairs as soon as reasonably possible to comply with it. If, however, the demands on his/her time and the possibility of conflicts of interest are not substantial, a person who holds judicial office on the date this Code becomes effective may:

a. continue to act as an officer, director, or non-legal advisor of a family business;
b. continue to act as an executor, administrator, trustee, or other fiduciary for the estate or person of one who is not a member of his/her family. [TCR 86-79]

TITLE 1
ARTICLE 8
BONDS AND SURETIES

1-800 Justification of surety.
1-801 Qualifications of surety.
1-802 Real estate mortgage as bond.
1-803 Valuation of real estate.
1-804 False valuation—penalty.
1-805 Action by Tribe or Tribal department—no bond required.
1-806 Appearance bond—enforcement.

1-800 Justification of surety. A ministerial officer whose duty it is to take security in any undertaking provided for by the Tribal Code shall require the person offered as surety, if not a qualified surety or bonding company, to make an affidavit of his/her qualifications, which affidavit may be made before such officer, and shall be endorsed upon or attached to the undertaking. If the undertaking is given by a qualified surety or bonding company, the credentials of the persons making the undertaking shall be shown and attached thereto. The ministerial officer shall have the power to administer oaths for the purpose of making any affidavits required by this Article. [TCR 86-79]

1-801 Qualifications of surety. The surety in every undertaking provided for by the Tribal Code, unless a surety or bonding company authorized to give their bond or undertaking by Tribal law, irrevocably submits him/herself to the jurisdiction of the Tribal Court for the purpose of enforcement of said bond or undertaking, and must be worth double the sum to be secured over and above all exceptions, debts and liabilities. Where there are two or more sureties in the same undertaking, they must in the aggregate have the qualifications prescribed in this Section. [TCR 86-79]

1-802 Real estate mortgage as bond. In every instance where bond, indemnity or guaranty is required, a first mortgage upon real estate within a state in which any portion of the Tribal jurisdiction shall be accepted, provided, that the amount of such bond, guaranty, or indemnity shall not exceed fifty (50) percent of the reasonable valuation of such improved real estate, provided further, that where the amount of such bond, guaranty or indemnity shall exceed fifty (50) percent of the reasonable valuation of such improved real estate, then such first mortgage shall be accepted to the extent of such fifty (50) percent valuation. [TCR 86-79]

1-803 Valuation of real estate. The officer, whose duty it is to accept and approve such bond, guaranty or indemnity, shall require the affidavits of two landowners or licensed real estate appraisers or brokers versed in land values in the community where such real estate is located to the value of such real estate. Said officer shall have the authority to administer the oaths and take said affidavits. [TCR 86-79]

1-804 False valuation—penalty. Any person willfully making a false affidavit as to the value of any such real estate shall be guilty of perjury and punished accordingly. Any officer administering or accepting such affidavit knowing it to be false shall be guilty of conspiracy to commit perjury and punished accordingly. Any such wrongdoer shall be liable in a civil action to the party injured by such false affidavit to the extent of the injury proximately caused thereby. [TCR 86-79]

1-805 Action by Tribe or Tribal department—no bond required. Whenever an action is filed in the Court by the Tribe, or by direction of any department of the Tribe, its agencies, commissions, or political branches, no bond, including cost, replevin, attachment, garnishment, re-delivery, "injunction bonds, appeal bonds, or other obligations of security shall be required from such party either to prosecute said suit, answer, or appeal the same." In case of an adverse decision, such costs as are taxable against such

party shall be paid out of the miscellaneous fund or other available fund of the party under whose direction the proceedings were instituted. [TCR 86-79]

1-806 Appearance bond—enforcement.

1. If a bench warrant or command to enforce a Court order by body attachment is issued in a case for divorce, legal separation, annulment, child support, or alimony, or in any civil proceeding in which a judgment debtor is summoned to answer as to assets, and the person arrested, pursuant to the authority of such process, makes a bond for his/her appearance at the time of trial or other proceeding in the case, the bond made shall be disbursed by the Court clerk upon order of the Court to the party in the suit who has procured the bench warrant or command for body attachment rather than to the Tribe as the Court shall direct for the payment of any sums due. The penalty on the bond or any part thereof shall, when recovered, first be applied to discharge the obligation adjudicated in the case in which the bond was posted, and any excess shall be deposited in the Court fund. The party who is the obligee on such bond shall have the right to enforce its penalty to the same extent and in the same manner as the Tribe may enforce the penalty on a forfeited bail bond.
2. Upon forfeiture of a bond payable to the Tribe as ordered by the Court, including bail bonds, the Tribe may enforce the penalty on the bond upon motion filed in the case by any method authorized for the execution of civil judgments. All amounts received upon such forfeited bonds as penalty shall be deposited in the Court fund. The Court may, for good cause shown, vacate order of bond forfeiture. [TCR 86-79]

TITLE 1
ARTICLE 9
MISCELLANEOUS

1-900 Deputy may perform official duties.
1-901 Affirmation.
1-902 Publication in "patent insides."
1-903 Action on official bond.
1-904 May be several actions on same security.
1-905 Immaterial errors to be disregarded.
1-906 Payments into Court for minors and incompetents.
1-907 Conserving moneys obtained for minors or incompetent persons.
1-908 Sharing of judicial officers.
1-909 Sharing of other judicial personnel.
1-910 Sharing of material resources.
1-911 Sharing of financial resources.
1-912 Repealed by TCR 93-85.
1-913 Copies of laws.
1-914 Cooperation by federal employees.
1-915 Effect of prior decisions of the Court.
1-916 Judicial review of legislative and executive actions.
1-917 Action when no procedure provided.
1-918 Adoption by reference not a waiver of sovereign power of the Tribe.
1-919 Actions by or against Tribe or its officers.
1-920 Actions by or against Tribe or its officers or employees.
1-921 Principles of construction.

1-900 Deputy may perform official duties. Any duty enjoined by the Tribal Code upon a ministerial office, and any act permitted to be done by him/her, may be performed by his/her lawful deputy unless otherwise specifically stated. [TCR 86-79]

1-901 Affirmation. Whenever an oath is required by the Tribal Code, the affirmation of a person conscientiously scrupulous of taking oath shall have the same effect. [TCR 86-79]

1-902 Publications in "patent insides."

1. Every daily or weekly newspaper published continuously for a period of two years in any county in which a portion of the Tribal jurisdiction has, or within or adjacent to the Tribal jurisdiction, and the Tribal newspaper shall be recognized and authorized to publish all publications and notices required or permitted to be published by the Tribal Code.
2. All publications and notices required by law to be published in a newspaper, if published in newspapers having one side of the paper printed away from the office of publication, known as patent outsides or insides, shall have the same force and effect as though the same were published in newspapers printed wholly and published as required by subsection (1) of this Section if at least one side of such paper is printed within the legal area. [TCR 86-79]

1-903 Action on official bond. When an officer, executor, or administrator within the jurisdiction of the Tribe by misconduct or neglect of duty, forfeits his/her bond or renders his/her sureties liable, any person injured thereby, or who is, by law, entitled to the benefit of the security, may bring an action thereon in his/her own name, against the officer, executor, or administrator and his/her sureties, or may proceed in a proper case as provided in the Winnebago Rules of Civil Procedure, to recover the amount to which he/she may be entitled by reason of the delinquency. [TCR 86-79]

1-904 May be several actions on same security. A judgment in favor of a party for one delinquency does not preclude the same or another party from an action on the same security for another delinquency. [TCR 86-79]

1-905 Immaterial errors to be disregarded. The Court, in every stage of action, must disregard any error or defect in the pleading or proceedings which does not affect the substantial rights of the adverse party, and no judgment shall be reversed or affected by reason of such immaterial or harmless error or defect. [TCR 86-79]

1-906 Payments into Court for minors and incompetents. Where any amount of money not exceeding five hundred dollars ($500.00) shall be deposited and paid into Court by virtue of any judgment, order, settlement, distribution, or decree for the use and benefit of, and to the credit of, any minor or incompetent person having no legal guardian of his estate appointed by the Court, and no person shall within ninety (90) days thereafter become the legal and qualified guardian of the estate of such minor or incompetent person if it appears to the Court that such money is needed for the support of such minor or incompetent person the Court may, in its discretion, order payment of such funds to be made to any proper and suitable person as trustee for such minor or incompetent person. Such order may be made by the Court in the original cause in which the funds are credited upon the application of any interested person and the Court may direct the clerk of the Court to make payment of the sum to be made in installments or in one lump sum as may seem for the best interests of such minor or incompetent person. If a qualified guardian has been appointed by the Court with bond, the Court shall order the money paid to the guardian for the use of the minor or incompetent person subject to such restrictions and accountings as the Court may direct. [TCR 86-79]

1-907 Conserving moneys obtained for minors or incompetents. Moneys recovered in any Court proceeding by next of kin or guardian ad litem for or on behalf of a person who is less than eighteen (18) years of age or incompetent in excess of five hundred dollars ($500.00) over sums sufficient for paying costs and expenses including medical bills and attorney's fees shall by order of the Court, be deposited in a banking or savings and loan institution, approved by the Court. Until the person becomes eighteen years of age or competent to again handle his/her affairs, withdrawals of moneys from such account or accounts shall be solely pursuant to order of the Court made in the case in which recovery was had. When an application for the order is made by a person who is not represented by an attorney, the judge of the Court shall prepare the order. This Section shall not apply in cases where a legal guardian has been appointed by the Court for the estate of the minor or incompetent person with adequate bond to secure any money released. In such cases, such money, or any portion thereof as the Court may direct, may be paid over to the guardian to be used exclusively for the support and education of such minor or incompetent person subject to such restrictions and accounting as the Court shall direct. [TCR 86-79]

1-908 Sharing of judicial officers. This Section is hereby repealed. [TCR 96-22]

1-909 Sharing of other judicial personnel. Notwithstanding any other provision of Tribal law, the Tribal Council is hereby authorized to negotiate an agreement with the Bureau of Indian Affairs or other Indian tribes for the shared use of Court clerks, prosecutors, bailiff, Court reporters, and other judicially-related or support personnel. In addition to any other necessary or convenient provision, such agreements may determine the method of selection and retention of shared personnel, their compensation, and required duties. When acting on behalf of the Tribal Courts, such personnel shall have all the powers and authority of the equivalent position as prescribed in the Tribal Code. Such personnel may be the same as, in addition to, or in lieu of, Tribal personnel in this position. [TCR 86-79]

1-910 Sharing of material resources. Notwithstanding any other provision of Tribal law, the Tribal Council is hereby authorized to negotiate an agreement with the Bureau of Indian Affairs, other Indian tribes, or any other unit of government for the shared use of facilities, including Courtroom, offices, jail space, equipment, and supplies necessary for the operation of the Court and law enforcement agencies of the Tribe. [TCR 86-79]

1-911 Sharing of financial resources. Provision may be made in the above-mentioned agreements for the allocation of fines, fees and Court costs to support the functions of the judicial system, provided, that the salaries of the magistrates, judges, justices and prosecutors shall not be subject to, or contingent upon the assessment or collection of any such fines, fees, Court costs, or penalties. Such agreements may also provide for certain monetary contributions by the participating Tribes or agencies to the funding of the Court and provide a formula therefor, and may designate the Court as a prime contractor, grantee, or similar designation to authorize the Court to apply directly to any funding source for the operation of the Court. [TCR 86-79]

1-912 Indians employed in Indian Service. Repealed. [TCR 86-79, 93-85]

1-913 Copies of Laws.

1. The Tribal Court law library shall be provided with copies of all federal, Tribal, and state laws and the regulations of the Bureau of Indian Affairs which may be applicable to the conduct of any persons within the Tribal jurisdiction.
2. Whenever the Court is in doubt as to the meaning of any law, treaty, or regulation, it may request the Attorney General to furnish an opinion on the point in question. [TCR 86-79]

1-914 Cooperation by federal employees.

1. No field employee of the Indian Service shall obstruct, interfere with, or control the functions of the Courts of the Tribe, or influence, or attempt to influence, interfere with, obstruct, or control such functions in any manner except in response to a request for advice or information from the Court.
2. Employees of the Bureau of Indian Affairs and the Indian Health Service, particularly those who are engaged in police, social service, health, and educational work, shall assist the Court upon its request in the preparation and presentation of the facts in the case, and in proper treatment of offenders and juveniles. [TCR 86-79]

1-915 Effect of prior decisions of the Court. Prior decisions of the Court's action for the Tribe shall be binding upon the parties thereto. The rules of law stated in such decisions not inconsistent with Tribal statutes enacted after such decisions, shall be precedent in the Court, subject to modification or being overruled by subsequent opinion of the Court as in other cases. [TCR 86-79]

1-916 Judicial review of legislative and executive actions. The Tribal Courts shall have the authority to review any act by the Tribal Council, or any Tribal officer, agent, or employee to determine whether that action, and the procedure or manner of taking that action, is constitutional under the Tribal Constitution, authorized by Tribal law, and not prohibited by the Indian Civil Rights Act. If the Court finds such action, or the manner of its exercise, to be unlawful, it may enjoin the action, refuse to recognize an unlawful action or refuse to apply the law or statute in question. If the Court finds that the contemplated action is authorized by the Constitution and Tribal statutes enacted thereto, or the common law, and that the manner in which the authorized action is to be exercised is not prohibited by the Tribal Constitution, Tribal statutes enacted pursuant thereto, or federal law, the Court shall dismiss the case. The Court shall not otherwise review the exercise of any authority committed to the discretion of a Tribal officer, agency, agent, or employee by Tribal law unless some specific provision of law authorizes judicial review of the merits of the discretionary decision or action. [TCR 86-79]

1-917 Action when no procedure provided. Whenever no specific procedure is provided in the Tribal Code, the Court may proceed in any lawful fashion. [TCR 86-79]

1-918 Adoption by reference not a waiver of sovereign power of the Tribe. The adoption of any law, Code or other document by reference into this Code shall not constitute a waiver or cession of any sovereign power of the Tribe to the jurisdiction whose law or Code is adopted, nor in any way diminish such sovereign power, but shall result in the law or Code thus adopted becoming the law of the Tribe. [TCR 86-79]

1-919 Actions by or against Tribe or its officers. Unless specifically waived by a resolution adopted by the Winnebago Tribe of Nebraska specifically referring to such, the Tribe shall be immune from suit in any civil actions, and its officers and employees shall be immune from suit for any liability arising from the performance of their official duties. [TCR 86-79, 93-85]

1-920 Actions by or against Tribe or its officers or employees. In any action otherwise authorized by or against the Tribe or its officers or employees arising from the performance of their official duties, the following modifications to the rules and procedures set forth in this Code shall apply:

1. Neither the Tribe nor its officers or employees when involved in a civil action arising from the performance of their official duties shall be liable for the payment of the costs or expenses of the opposing party.
2. Neither the Tribe nor its officers or employees when involved in a civil action arising from the performance of their official duties shall be required to post security by bond or otherwise for any purpose. [TCR 86-79]

1-921 Principles of construction. The following principles of construction will apply to this Code unless a different construction is obviously intended:

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

TITLE 1
ARTICLE 10
OFFICE OF THE GENERAL COUNSEL

1-1000 Office established.
1-1001 Duties.
1-1002 Delegation of duties.
1-1003 Engagement of outside legal counsel.
1-1004 Title of Attorney General.

1-1000 Office established. There is hereby established, ordained and activated an office which shall be known as the Office of the General Counsel. The primary officer of said Office shall be known as the General Counsel for the Winnebago Tribe of Nebraska.

1-1001 Duties. The General Counsel shall manage all legal functions of the Tribe, except functions of the judicial branch of government. The General Counsel shall provide legal advice to the Tribal Council and all Tribal government entities, including all Tribal agencies and departments. The General Counsel shall draft necessary legislation to carry out the policies of the Tribal Council. The General Counsel shall represent the Tribal Council in negotiations with members of the judicial branch. The General Counsel shall represent the Tribe in all civil, criminal and juvenile proceedings in which the Tribe is named a party. The General Counsel shall manage the Tribe's relations with outside counsel.

1-1002 Delegation of duties. The General Counsel may in his or her discretion delegate any of his or her duties to internal or outside counsel or staff.

1-1003 Engagement of outside legal counsel. No agency or department of the Tribe may engage legal counsel without first receiving prior written permission from the General Counsel.

1-1004 Title of Attorney General. The General Counsel shall also possess the title "Attorney General" and shall be entitled to use either title interchangeably.

TITLE 1
ARTICLE 11
TRADITIONAL WELLNESS COURT
(Amended August 29, 2011)

1-1101 Construction.
1-1102 Purpose.
1-1103 Traditional Wellness Court established.
1-1104 Personal and subject matter jurisdiction.
1-1105 Appointment of Wellness Court Panel Members.
1-1106 Referral process.
1-1107 Reports to Tribal Court.
1-1108 Nature of cases to be decided by the Traditional Wellness Court.
1-1109 Powers and duties of Traditional Wellness Court Panel Members.
1-1110 Powers and duties of the Traditional Wellness Court Coordinator.
1-1111 Intake process.
1-1112 Procedures.
1-1113 Records and confidentiality.
1-1114 Completion of Proceedings.
1-1115 Destruction of Records.
1-1116 Appeals.

1-1101 Construction. These provisions shall be interpreted liberally with the goal of providing a fair and traditional alternative to the standard juvenile justice proceedings. To the extent possible, the provisions herein shall be used and applied in accordance with Winnebago tradition and custom. [TCR 11-68, 11-155, 11-164]

1-1102 Purpose. The purpose of the Traditional Wellness Court is to:

1. Provide formal support, structure and enforcement to traditional Winnebago methods of fostering juvenile growth and resolving delinquency.
2. Reduce the number of offenses committed by juveniles, minimize recidivism among juvenile offenders, and prevent escalation of criminal behavior.
3. Inform and teach young tribal members about tribal traditions, culture and history, family, and the individual's role in the Tribe.
4. Include grandparents, aunts, uncles and extended family members in the process of disciplining juvenile offenders.
5. Coordinate with Tribal resources and programs in an effort to influence and make positive corrections to the attitude and conduct of young Tribal members. [TCR 11-68, 11-155, 11-164]

1-1103 Traditional Wellness Court established.

1. The Traditional Wellness Court of the Winnebago Tribe is hereby established as part of the Winnebago Tribal Court. The Wellness Court may use the Tribal Court as a resource and infrastructure for purposes of supporting and maintaining the Winnebago Tribal Court system. The powers and duties of the Traditional Wellness Court are set forth in this Article.
2. The Traditional Wellness Court proceedings shall be conducted by a panel of Tribal members who will use knowledge of family and traditional practices to address the behavior of individuals appearing before the Wellness Court.
3. The Traditional Wellness Court panel shall be comprised of not less than six (6) Tribal members who are respected members of the community, and who possess knowledge of family structure, extended family relationships, and Winnebago culture. Alternates may be appointed as needed by the Appointing Committee.
4. Individuals appearing before the Traditional Wellness Court shall not be represented by an attorney in such proceedings unless he/she:
   a. Is permitted to so by all three presiding panel members;

b. Has been called as witnesses; or
c. Is a party. [TCR 11-68, 11-155, 11-164]

1-1104 Personal and subject matter jurisdiction. Upon receiving a Petition for Referral by the Tribal Prosecutor and upon the consent and agreement of the juvenile and the Traditional Wellness Court, a case shall be referred to the Traditional Wellness Court. Members of the Wellness Court shall not have authority to hear a case unless the juvenile and the Traditional Wellness Court consent to such authority in writing and the Wellness Court has accepted the case. [TCR 11-68, 11-155, 11-164]

1-1105 Appointment of Wellness Court Panel Members. The Chief Judge of the Winnebago Tribal Court, the Tribal Court Administrator, and a designated member of the Tribal Council shall comprise the Appointing Committee of the Traditional Wellness Court. The Appointing Committee shall have the authority to appoint panel members comprising the Traditional Wellness Court and alternate panel members as needed. Appointment shall be made upon evaluation of the qualifications of applicants for the Wellness Court. The Appointing Committee, in its discretion, may appoint Wellness Court Panel Members on an interim or continuing basis. The Appointing Committee may also appoint alternate panel members as needed on a temporary basis. [TCR 11-68, 11-155, 11-164]

1-1106 Referral process.

1. Following receipt of a law enforcement report and citation and prior to filing a criminal complaint, the Tribal Prosecutor shall consult with the Traditional Wellness Coordinator to determine if the juvenile is eligible for referral to the Traditional Wellness Court.
2. If the Tribal Prosecutor and Traditional Wellness Coordinator determine eligibility, then the Traditional Wellness Coordinator shall notify the juvenile of the preliminary eligibility determination and schedule an intake appointment.
3. The Tribal Prosecutor shall submit a "Petition for Referral" to the Traditional Wellness Court along with a copy of the law enforcement report and citation.
4. Following the intake appointment, the Traditional Wellness Court Panel shall decide whether to accept the case.
5. If the case is accepted, the juvenile shall have the option to:
   a. Proceed with Tribal Court proceedings; or
   b. Be referred to the Traditional Wellness Court.

   A juvenile may decline participation in the Traditional Wellness Court at any time and have their case sent back to the Tribal Prosecutor who shall continue initiating juvenile court proceedings.
6. If the juvenile agrees to referral to the Traditional Wellness Court, the juvenile, his/her parent(s) or legal guardian(s), and the Traditional Wellness Court shall enter into an agreement setting forth the condition for the juvenile's participation in the Wellness Court.
   a. If the juvenile completes the Traditional Wellness Court proceedings to the satisfaction of the Wellness Court Panel, the case shall be closed.
   b. If, for any reason, the juvenile is discharged unsuccessfully by the presiding panel of the Traditional Wellness Court or voluntarily withdraws, the case shall be sent back to the Tribal Prosecutor, and the Tribal Prosecutor shall continue initiating juvenile court proceedings against the juvenile. However, nothing contained in the final written report shall be used by the Tribal Court to affect the disposition or sentencing. [TCR 11-68, 11-155, 11-164]

1-1107 Reports to Tribal Prosecutor.

1. The Wellness Court shall submit a monthly progress report to the Tribal Prosecutor stating:
   a. The status of all proceedings presently before the Wellness Court, if any;

b. The final result of any proceedings that were concluded after the previous monthly report; and
c. If there are no proceedings presently before the Wellness Court, stating as such.

2. Either at the conclusion of the Traditional Wellness Court proceedings or at such time as the Wellness Court finds there can be no resolution of the matter, the Wellness Court shall submit a final written report of the results of the juvenile's efforts to the Tribal Prosecutor and the Clerk of Court. This final written record shall be maintained in the Court file.
3. The final written report shall include:
   a. A statement as to whether the juvenile had successfully completed the Wellness Court proceedings; and
   b. Any other information the Wellness Court deems necessary.
4. If the juvenile does not successfully complete the requirements set forth by the Wellness Court, nothing contained in the progress reports or final written report shall be used by the Tribal Court in the juvenile court proceedings. [TCR 11-68, 11-155, 11-164]

1-1108 Eligibility of Juveniles to Participate in the Traditional Wellness Court. Except as otherwise provided herein, only cases involving juveniles who are first-time offenders shall be eligible for resolution by the Traditional Wellness Court.

1. "First-time offender" shall mean a person who has not:
   a. Been convicted of any offense under Title 3 of the Winnebago Tribal Code or any civil or criminal traffic offense under Title 6 of the Winnebago Tribal Code that is punishable by imprisonment; or
   b. Had a prior criminal or delinquency petition dismissed due to participation in the Traditional Wellness Court.
2. Juveniles with a prior offense may participate in the Traditional Wellness Court subject to review and acceptance by the Traditional Wellness Court on a case-by-case basis. The Traditional Wellness Court may establish additional rules to assist in determining whether a juvenile with a prior offense will be accepted for participation in the Traditional Wellness Court.
3. Juveniles who would otherwise be charged with the following offenses shall be ineligible for participation in the Traditional Wellness Court:
   a. Offenses under Title 3, Article 4 of the Winnebago Tribal Code involving Crimes Against the Person; and
   b. Offenses constituting domestic violence under the Winnebago Tribal Code. [TCR 11-68, 11-155, 11-164]

1-1109 Powers and duties of Traditional Wellness Court Panel Members.

1. The Wellness Court Panel conducting proceedings shall consist of three (3) Wellness Court Panel Members. The Wellness Court Panel shall select among themselves which three Wellness Court Panel Members shall conduct the proceedings on a case-by-case basis. If three (3) Panel Members cannot be selected for a case, alternate Panel Members may be selected to fill in vacancies for that case.
2. Wellness Court Panel Members shall have the authority to conduct proceedings in any manner that facilitates the administration of justice, and to include or exclude individual family members, or any other persons that the panel deems necessary, from any proceedings.
3. If the juvenile is a ward of the Court pursuant to Title 4 of the Tribal Code, any services as may be deemed necessary shall be coordinated with the juvenile's case worker.
4. Wellness Court Panel Members shall exercise discretion to determine and impose the appropriate requirements for successful completion of the wellness proceedings in each case. Whenever

possible, the Wellness Court should seek to involve a juvenile's family members and teach juveniles about Winnebago tribal custom and the juvenile's role in the Tribe.

5. Wellness Court Panel Members shall have the discretion to recuse themselves as deemed proper.
6. Wellness Court Panel Members shall establish a reasonable time frame for completion of all Wellness Court proceedings. [TCR 11-68, 11-155, 11-164]

1-1110 Powers and duties of the Traditional Wellness Court Coordinator.

1. The Coordinator shall facilitate the activities of the Traditional Wellness Court and act as directed by the Wellness Court and shall create and maintain all Traditional Wellness Court files.
2. The Coordinator shall assist the Tribal Prosecutor in making preliminary determinations of the eligibility of a juvenile to participate in the Wellness Court.
3. The Coordinator shall receive referrals from the Tribal Prosecutor on behalf of the Traditional Wellness Court, schedule proceedings, contact Wellness Court Panel Members and distribute all documents as necessary.
4. The Coordinator shall monitor the progress of all cases before the Wellness Court and submit required reports to the Tribal Prosecutor and Clerk of Court.
5. The Coordinator shall serve as a liaison for the Traditional Wellness Court, coordinating the efforts of the Wellness Court, probation officers, school counselors, family members and other community resources as necessary to assist in the success of the case before the Wellness Court.
6. The Coordinator shall assist the Wellness Court with drafting all reports, disposition recommendations and proposed orders. [TCR 11-68, 11-164]

1-1111 Intake process.

1. Upon the initial determination of eligibility of a juvenile, the Coordinator shall create a file containing a copy of law enforcement report and citation.
2. At or immediately following the initial meeting with the juvenile, the Coordinator shall schedule an intake appointment with the juvenile and his/her parent(s) or legal guardian(s). The intake documents and Petition for Referral shall be placed in the file.
3. Following the intake appointment, the Coordinator shall distribute copies of the file to all Wellness Court Panel Members.
4. The Wellness Court Panel Members shall review the file documents and determine whether to accept the referral. If the referral is accepted, the Coordinator shall draft an agreement setting forth the conditions for the juvenile's participation in the Traditional Wellness Court proceedings and notify the juvenile and his/her parent(s) or legal guardian(s).
5. After the agreement is signed by the juvenile, his/her parent(s) or legal guardian(s), and the Coordinator, the Wellness Court Panel shall determine which three Wellness Court Panel Members shall conduct the proceeding and notify the Coordinator. The Coordinator shall schedule the initial proceeding no later than twenty-one (21) days after the agreement is signed.
6. The Wellness Court shall provide notification to the juvenile and any other persons or entities as the Wellness Court may deem appropriate.
7. The Wellness Court shall certify to the Tribal Prosecutor that the intake process has been completed. [TCR 11-68, 11-155, 11-164]

1-1112 Procedures. The Traditional Wellness Court shall adopt such procedures as necessary to administer justice and carry out the intent of this Article. [TCR 11-68, 11-164]

1-1113 Records and confidentiality. The records of the Traditional Wellness Court shall be privileged. Traditional Wellness Court records shall be confidential and shall not be shared outside the Wellness Court. [TCR 11-68, 11-155, 11-164]

1-1114 Completion of Proceedings.

1. When a juvenile has satisfactorily completed requirements set forth by the Traditional Wellness Court, the Traditional Wellness Court shall submit notice and a final report to the Tribal Prosecutor and Clerk of Court. The Tribal Prosecutor shall close the case or the equivalent.
2. Where a juvenile has not satisfactorily completed the requirements set forth by the Traditional Wellness Court, the case shall be referred back to the Tribal Prosecutor. The Tribal Prosecutor shall proceed with the process of filing a criminal complaint in the juvenile court. [TCR 11-68, 11-155, 11-164]

1-1115 Destruction of Records.

1. Following the completion of a proceeding, whether successful or unsuccessful, the Traditional Wellness Court shall destroy all contents of the Traditional Wellness Court case file except for the final written report.
2. All copies of the file provided to the Traditional Wellness Court Panel and any documents provided to any other participants shall be returned to the Traditional Wellness Court Coordinator following disposition. Such documents shall be destroyed regardless of the outcome of the Traditional Wellness Court proceedings. [TCR 11-68, 11-155, 11-164]

1-1116 Appeals. Decisions of the Traditional Wellness Court are not subject to appeal. [TCR 11-68, 11-155, 11-164]

TITLE 1A
TABLE OF REVISIONS

The following table is included in this title as a guide for determining whether each article properly reflects the current version. This table will be updated with the revision of each article.

Through usage and supplementation, pages in bound titles can be inserted and removed when sections are revised on an article-by-article basis. This table should be placed before the Table of Contents in the title.

The "Article" column lists each article, and the "Section" column lists any corresponding sections that have been revised, in sequence. The "Revised Date" column reflects the effective date of the revision (e.g., "6/20/15"). If an article is not listed in the table, it has not been revised since the December 2015 Winnebago Tribal Code update and distribution.

Article	**Section**	**Revised Date**

TITLE 1A
WINNEBAGO RULES OF EVIDENCE
As amended March 1, 1993.
(Redesignated February 24, 1994)

ARTICLE 1A
GENERAL PROVISIONS

Rule 1A-101 Scope.
Rule 1A-102 Purpose and construction.
Rule 1A-103 Rulings on evidence.
Rule 1A-104 Preliminary questions.
Rule 1A-105 Limited admissibility.
Rule 1A-106 Remainder of or related writings or recorded statements.

TITLE 1A
ARTICLE 2
JUDICIAL NOTICE

Rule 1A-201 Judicial notice of adjudicative facts.

TITLE 1A
ARTICLE 3
PRESUMPTIONS

Rule 1A-301 Presumptions in general in civil actions and proceedings.
Rule 1A-302 Applicability of state law in civil actions and proceedings.

TITLE 1A
ARTICLE 4
RELEVANCY AND ITS LIMITS

Rule 1A-401 Definition of relevant evidence.
Rule 1A-402 Relevant evidence generally admissible; irrelevant evidence inadmissible.
Rule 1A-403 Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time.
Rule 1A-404 Character evidence: not admissible to prove conduct; exceptions; other crimes.
Rule 1A-405 Methods of proving character.
Rule 1A-406 Habit; routine practice.
Rule 1A-407 Subsequent remedial measures.
Rule 1A-408 Compromise and offers to compromise.
Rule 1A-409 Payment of medical and similar expenses.
Rule 1A-410 Inadmissibility of pleas, offers of pleas, and related statements.
Rule 1A-411 Liability Insurance.
Rule 1A-412 Sex offenses cases: relevance of victim's past behavior.

TITLE 1A
ARTICLE 5
[RESERVED]

TITLE 1A
ARTICLE 6
WITNESSES
(Revised March 9, 2011)

Rule 1A-601 General rule of competency.
Rule 1A-602 Lack of personal knowledge.
Rule 1A-603 Oath or affirmation.
Rule 1A-604 Interpreters.
Rule 1A-605 Competency of judge as witness.
Rule 1A-606 Competency of juror as witness.
Rule 1A-607 Who may impeach.
Rule 1A-608 Evidence of character and conduct of witness.
Rule 1A-609 Impeachment by evidence of conviction of crime.
Rule 1A-610 Religious beliefs or opinions.
Rule 1A-611 Mode and order of interrogation and presentation.
Rule 1A-612 Writing used to refresh memory.
Rule 1A-613 Prior statements of witnesses.
Rule 1A-614 Calling and interrogation of witnesses by Court.
Rule 1A-615 Exclusion of witnesses.
Rule 1A-616 Patient/Client - Physician/Counselor Privilege.

TITLE 1A
ARTICLE 7
OPINION AND EXPERT TESTIMONY

Rule 1A-701 Opinion testimony by lay witnesses.
Rule 1A-702 Testimony by experts.
Rule 1A-703 Bases of opinion testimony by experts.
Rule 1A-704 Opinion on ultimate issue.
Rule 1A-705 Disclosure of facts or data underlying expert opinion.
Rule 1A-706 Court appointed experts.

TITLE 1A
ARTICLE 8
HEARSAY

Rule 1A-801 Definitions.
Rule 1A-802 Hearsay rule.
Rule 1A-803 Hearsay exceptions; availability of declarant immaterial.
Rule 1A-804 Hearsay exceptions; declarant unavailable.
Rule 1A-805 Hearsay within hearsay.
Rule 1A-806 Attacking and supporting credibility of declarant.

TITLE 1A
ARTICLE 9
AUTHENTICATION AND IDENTIFICATION

Rule 1A-901 Requirement of authentication or identification.
Rule 1A-902 Self-authentication.
Rule 1A-903 Subscribing witness' testimony unnecessary.

TITLE 1A
ARTICLE 10
CONTENTS OF WRITINGS, RECORDINGS AND PHOTOGRAPHS

Rule 1A-1001 Definitions.
Rule 1A-1002 Requirement of original.
Rule 1A-1003 Admissibility of duplicates.
Rule 1A-1004 Admissibility of other evidence of contents.
Rule 1A-1005 Public records.
Rule 1A-1006 Summaries.
Rule 1A-1007 Testimony or written admission of party.
Rule 1A-1008 Functions of Court and jury.

TITLE 1A
ARTICLE 11
MISCELLANEOUS RULES

Rule 1A-1101 Applicability of rules.
Rule 1A-1102 Amendments.
Rule 1A-1103 Title.

TITLE 1A
WINNEBAGO RULES OF EVIDENCE
(As amended to March 1, 1993)
(Redesignated February 24, 1994)

ARTICLE 1
GENERAL PROVISIONS

Rule 1A-101 Scope.
Rule 1A-102 Purpose and construction.
Rule 1A-103 Rulings on evidence.
Rule 1A-104 Preliminary questions.
Rule 1A-105 Limited admissibility.
Rule 1A-106 Remainder of or related writings or recorded statements.

Rule 1A-101 Scope. These rules govern, evidentiary questions in all proceedings in the Courts of the Winnebago Tribe of Nebraska, whether civil, criminal, juvenile, or otherwise except as may be otherwise specifically provided by this Tribal Code. [TCR 86-79]

Rule 1A-102 Purpose and construction. These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined. [TCR 86-79]

Rule 1A-103 Rulings on evidence.

1. Effect of erroneous ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected:
   a. Objection. In case the ruling is one admitting evidence, a timely objection or motion, to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or
   b. Offer of proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the Court by offer or was apparent from the context within which questions were asked.
2. Record of offer and ruling. The Court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.
3. Hearing of jury. In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.
4. Plain error. Nothing in this rule precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the Court. [TCR 86-79, 93-85]

Rule 1A-104 Preliminary questions.

1. Questions of admissibility generally. Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the Court, subject to the provisions of subdivision (b), in making its determination it is not bound by the rules of evidence except those with respect to privileges.
2. Relevancy conditioned on fact. When the relevancy of evidence depends upon the fulfillment of a condition of fact, the Court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

3. Hearing of jury. Hearings on the admissibility of confession shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require, or when an accused is a witness, if he/she so requests.
4. Testimony by accused. The accused in a criminal case does not, by testifying upon a preliminary matter, become subject to cross-examination as to other issues in the case.
5. Weight and credibility. This Rule does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility. [TCR 86-79, 93-85]

Rule 1A-105 Limited admissibility. When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the Court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly. [TCR 86-79]

Rule 1A-106 Remainder of or related writings or recorded statements. When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it. [TCR 86-79, 93-85]

TITLE 1A
ARTICLE 2
JUDICIAL NOTICE

Rule 1A-201 Judicial notice of adjudicative facts.

Rule 1A-201 Judicial notice of adjudicative facts.

1. Scope of rule. This rule governs only judicial -notice of adjudicative facts.
2. Kinds of facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the Tribal Court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.
3. When discretionary. A Court may take judicial notice, whether requested or not.
4. When mandatory. A Court shall take judicial notice if requested by a party and supplied with the necessary information.
5. Opportunity to be heard. A party is entitled, upon timely request, to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.
6. Time of taking notice. Judicial -notice may be taken at any stage of the proceeding.
7. Instructing jury. In a civil action or proceeding, the Court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the Court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed. [TCR 86-79]

TITLE 1A
ARTICLE 3
PRESUMPTIONS

Rule 1A-301 Presumptions in general in civil actions and proceedings.

Rule 1A-302 Applicability of state law in civil actions and proceedings.

Rule 1A-301 Presumptions in general in civil actions and proceedings. In all civil actions and proceedings not otherwise provided for by these Rules, a presumption imposes upon the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of non-persuasion, which remains throughout the trial upon the party on whom it was originally cast. [TCR 86-79, 93-85]

Rule 1A-302 Applicability of state law in civil actions and proceedings. In civil actions and proceedings, the effect of a presumption respecting a fact which is an element of a claim or defense as to which state law supplies the rule of decision is determined in accordance with state law. [TCR 93-85]

TITLE 1A
ARTICLE 4
RELEVANCY AND ITS LIMITS

Rule 1A-401	Definition of relevant evidence.
Rule 1A-402	Relevant evidence generally admissible; irrelevant evidence inadmissible.
Rule 1A-403	Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time.
Rule 1A-404	Character evidence: not admissible to prove conduct; exceptions; other crimes.
Rule 1A-405	Methods of proving character.
Rule 1A-406	Habit; routine practice.
Rule 1A-407	Subsequent remedial measures.
Rule 1A-408	Compromise and offers to compromise.
Rule 1A-409	Payment of medical and similar expenses.
Rule 1A-410	Inadmissibility of pleas, offers of pleas, and related statements.
Rule 1A-411	Liability Insurance.
Rule 1A-412	Sex offenses cases: relevance of victim's past behavior.

Rule 1A-401 Definition of relevant evidence. Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence the determination of the action more probable or less probable than it would be without the evidence. [TCR 86-79]

Rule lA-402 Relevant evidence generally admissible; irrelevant evidence inadmissible. All relevant evidence is admissible, except as otherwise provided by the Constitution of the Winnebago Tribe of Nebraska, adopted by resolution of the Winnebago Tribe of Nebraska, by these Rules, or by other rules prescribed by the Court of Appeals pursuant to statutory authority. Evidence which is not relevant is not admissible. [TCR 86-79, 93-85]

Rule lA-403 Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time. Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. [TCR 86-79]

Rule lA-404 Character evidence: not admissible to prove conduct, exceptions; other crimes.

1. Character evidence generally. Evidence of a person's character or a trait of character is not admissible for the purpose of proving that action in conformity therewith on a particular occasion, except:
   a. Character of accused. Evidence of a pertinent trait of his/her character offered by an accused, or by the prosecution to rebut the same;
   b. Character of victim. Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;
   c. Character of witness. Evidence of the character of a witness, as provided in Rules 1A-607, 1A-608, and 1A-609.
   d. Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial or during trial if the Court excuses pretrial notice on

good cause shown, of the general nature of any such evidence it intends to introduce at trial. [TCR 86-79, 93-85]

Rule 1A-405 Methods of proving character.

1. Reputation or opinion. In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.
2. Specific instances of conduct. In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of his/her conduct. [TCR 86-79]

Rule 1A-406 Habit; routine practice. Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice. [TCR 86-79]

Rule 1A-407 Subsequent remedial measures. When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This Rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment. [TCR 86-79]

Rule 1A-408 Compromise and offers to compromise. Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This Rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This Rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negotiating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution. [TCR 86-79]

Rule lA-409 Payment of medical and similar expenses. Evidence of finishing or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury. [TCR 86-79]

Rule 1A-410 Inadmissibility of pleas, offers of pleas, and related statements. Except as otherwise provided in this Rule, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussion:

1. A plea of guilty which was later withdrawn;
2. A plea of nolo contendere;
3. Any statement made in the course of any proceedings under Rule 11 of the Federal Rules of Criminal Procedure or comparable state procedure regarding either of the foregoing pleas; or
4. Any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn. However, such a statement is admissible (a) in any proceeding wherein another statement made in the course of the same plea or plea discussions have been introduced and the statement ought in

fairness be considered contemporaneously with it, or (b) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel. [TCR 86-79, 93-85]

Rule 1A-411 Liability insurance.

1. Evidence that a person was or was not insured against liability is not admissible upon the issue whether he/she acted negligently or otherwise wrongfully. This Rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.
2. Evidence that a person was or was not insured against liability and the limits of coverage and other relevant factors is admissible in a bifurcated jury trial sounding in tort in the second phase of the UW upon the issue of the amount of actual and consequential damages to be awarded. [TCR 86-79]

Rule lA-412 Sex offense cases: relevance of victim's past behavior.

1. Notwithstanding any other provision of law, in a criminal case in which a person is accused of an offense under Winnebago Tribal Code Sections 3-416 through 3-422 or Chapter 109A of Title 18, United States Code, reputation or opinion evidence of the past sexual behavior of an alleged victim of such offense is not admissible.
2. Notwithstanding any other provision of law, in a criminal case in which a person is accused of an offense under Winnebago Tribal Code Sections 3-416 through 3-422 or Chapter 109A of Title 18, United States Code, evidence of a victim's past sexual behavior other than reputation or opinion evidence is also not admissible, unless such evidence other than reputation or opinion evidence is:
   a. Admitted in accordance with subdivisions (cXl) and (cX2) and is constitutionally required to be admitted; or
   b. Admitted in accordance with subdivision (C) and is evidence of:
      i. Past sexual behavior with persons other than the accused, offered by the accused upon the issue of whether the accused was or was not, with respect to the alleged victim, the source of semen or injury; or
      ii. Past sexual behavior with the accused and is offered by the accused upon the issue of whether the alleged victim consented to the sexual behavior with respect to which such offense is alleged.
3. a. If the person accused of committing an offense under Winnebago Tribal Code Sections 3-416 through 3-422 or Chapter 109A of Title 18, United States Code intends to offer under subdivision (b) evidence of specific instances of the alleged victim's past sexual behavior, the accused shall make a written motion to offer such evidence not later than fifteen days before the date on which the trial in which such evidence is to be offered is scheduled to begin, except that the Court may allow the motion to be made at a later date, including during trial if the Court determines either that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence or that the issue to which such evidence relates has newly arisen in the case. Any motion made under this paragraph shall be served on all other parties and on the alleged victim.
   b. The motion described in paragraph (1) shall be accompanied by a written offer of proof. If the Court determines that the offer of proof contains evidence described in subdivision (b), the Court shall order a hearing in chambers to determine if such evidence is admissible. At such hearing, the parties may call witnesses, including the alleged victim, and offer relevant evidence. Notwithstanding subdivision (b) of rule Al-104, if the relevancy of the evidence which the accused seeks to offer in the trial depends upon the fulfillment of a condition of fact, the Court, at the hearing in chambers or a subsequent

hearing in chambers scheduled for such purpose, shall accept evidence on the issue of whether such condition of fact is fulfilled and shall determine such issue.

c. If the Court determines on the basis of the hearing described in paragraph (C) that the evidence which the accused seeks to offer is relevant and that the probative value of such evidence outweighs the danger of unfair prejudice, such evidence shall be admissible in the trial to the extent an order made by the Court specifies evidence which may be offered and areas with respect to which the alleged victim may be examined or cross-examined.

4. For purposes of this Rule, the term past sexual behavior means sexual behavior other than the sexual behavior with respect to which an offense under Winnebago Tribal Code Sections 3-416 through 3-422 or Chapter 109A of Title 18, United States Code is alleged. [TCR 93-85]

TITLE 1A
ARTICLE 5
[RESERVED]

TITLE 1A
ARTICLE 6
WITNESSES
(Revised March 9, 2011)

Rule 1A-601	General rule of competency.
Rule 1A-602	Lack of personal knowledge.
Rule 1A-603	Oath or affirmation.
Rule 1A-604	Interpreters.
Rule 1A-605	Competency of judge as witness.
Rule 1A-606	Competency of juror as witness.
Rule 1A-607	Who may impeach.
Rule 1A-608	Evidence of character and conduct of witness.
Rule 1A-609	Impeachment by evidence of conviction of crime.
Rule 1A-610	Religious beliefs or opinions.
Rule 1A-611	Mode and order of interrogation and presentation.
Rule 1A-612	Writing used to refresh memory.
Rule 1A-613	Prior statements of witnesses.
Rule 1A-614	Calling and interrogation of witnesses by Court.
Rule 1A-615	Exclusion of witnesses.
Rule 1A 616	Patient/Client – Physician/Counselor Privilege.

Rule 1A-601 General rule of competency. Every person is competent to be a witness except as otherwise provided in these Rules. However, in civil actions and proceedings, with respect to an element of a claim or defense as to which state law supplies the rule of decision, the competency of a witness shall be determined in accordance with the state law. [TCR 93-85]

Rule 1A-602 Lack of personal knowledge. A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This Rule is subject to the provisions of Rule 1A-703, relating to opinion testimony by expert witnesses. [TCR 86-79, 93-85]

Rule 1A-603 Oath or affirmation. Before testifying every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness' conscience and impress the witness' mind with the duty to do so. [TCR 86-79, 93-85]

Rule 1A-604 Interpreters. An interpreter is subject to the provisions of these Rules relating to qualification as an expert and the administration of an oath or affirmation to make a true translation. [TCR 86-79, 93-85]

Rule 1A-605 Competency of judge as witness. The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point. [TCR 86-79]

Rule 1A-606 Competency of juror as witness.

1. At the trial. A member of the jury may not testify as a witness before that jury in the trial of the case in which the juror is sitting as a juror. If the juror is called so to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.
2. Inquiry into validity of verdict or indictment. Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon the juror's or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's

attention, or whether any outside influence was improperly brought to bear upon any juror. Nor may the juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would he precluded testifying be received for these purposes. [TCR 86-79; 93-85]

Rule 1A-607 Who may impeach. The credibility of a witness may be attacked by any party, including the party calling him/her. [TCR 86-79]

Rule 1A-608 Evidence of character and conduct of witness.

1. Opinion and reputation evidence of character. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truth character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.
2. Specific instances of conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting his/her credibility, other than conviction of crime as provided in Rule 1A-609, may not be proved by extrinsic evidence. They may, however, in the discretion of the Court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified. The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of privilege against self-incrimination when examined with respect to matters which relate only to credibility. [TCR 86-79]

Rule 1A-609 Impeachment by evidence of conviction of crime.

1. General rule. For the purpose of attacking the credibility of a witness:
   a. Evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Rule 1A-403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the Court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and
   b. Evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty of false statement, regardless of the punishment.
      i. Time limit. Evidence of a conviction under this Rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the Court determines, in the interest of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than ten years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.
      ii. Effect of pardon, annulment, or certificate of rehabilitation. Evidence of a conviction is not admissible under this Rule if (1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, and that person has not been convicted of a subsequent crime which was punishable

by death or imprisonment in excess of one year, or (2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

iii. Juvenile adjudication. Evidence of juvenile adjudication is generally not admissible under this Rule. The Court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the Court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.

iv. Pendency of appeal. The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible. [TCR 86-79, 93-85]

Rule 1A-610 Religious beliefs or opinions. Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature his/her credibility is impaired or enhanced. [TCR 86-79]

Rule 1A-611 Mode and order of interrogation and presentation.

1. Control by Court. The Court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.
2. Scope of cross-examination. Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The Court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.
3. Leading questions. Leading questions should not be used on the direct examination of a witness except as may be necessary to develop testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions. [TCR 86-79, 93-85]

Rule 1A-612 Writing used to refresh memory. If a witness uses a writing to refresh memory for the purpose of testifying either:

1. While testifying; or
2. Before testifying if the Court in its discretion determines it is necessary in the interest of justice, an adverse party is entitled to have the writing produced at the hearing to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness. If it is claimed that the writing contains matters not related to the subject matter of the testimony, the Court shall examine the writing in camera, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate Court in the event of an appeal. If a writing is not produced or delivered pursuant to order under this Rule, the Court shall make any order justice requires, except that in criminal cases when the prosecution elects not to comply, the order shall be one showing the testimony or, if the Court in its discretion determines that the interests of justice so require, declaring a mistrial. [TCR 86-79, 93-85]

Rule 1A-613 Prior statements of witnesses.

1. Examining witness concerning prior statements. In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request the same shall be shown or disclosed to opposing counsel.
2. Extrinsic evidence of prior inconsistent statements of witness. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate the witness thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in Rule 1A-801(d)(2). [TCR 86-79, 93-85]

Rule 1A-614 Calling and interrogation of witnesses by Court.

1. Calling by Court. The Court may, on its own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.
2. Interrogation by Court. The Court may interrogate witnesses, whether called by itself or by a party.
3. Objections. Objections to the calling of witnesses by the Court or to interrogation by it may be made at the time or at the next available opportunity when the jury is not present. [TCR 86-79]

Rule 1A-615 Exclusion of witnesses. At the request of a party, the Court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order on its own motion. This Rule does not authorize exclusion of (1) a party who is a natural person, or (2) an officer or employee of a party which is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to the presentation of his/her cause. [TCR 86-79]

Rule 1A-616 Patient/Client – Physician/Counselor Privilege.

1. Definitions.
   a. A “patient” is a person who consults or is examined or interviewed by a physician for purposes of diagnosis or treatment of his/her physical, mental or emotional condition.
   b. A “physician” is (i) a person who is licensed to practice medicine pursuant to the laws of any state or nation or who is reasonably believed by the patient so to be or (ii) a person licensed as a psychologist pursuant to the laws of the state or nation who devotes all or a part of his/her time to the practice of psychology.
   c. A “client” is a person who consults or is interviewed by a professional counselor for professional counseling.
   d. “Professional counseling” means the assessment and treatment of mental and emotional disorders within the context of professional counseling theory and practice of individuals, couples, families or groups.
   e. A “professional counselor” is a person certified as a professional counselor pursuant to the laws of any state or nation.
   f. A communication is “confidential” if not intended to be disclosed to third persons other than those present to further the interest of (i) the patient in the consultation, examination, or interview, persons reasonably necessary for the transmission of the communication, or persons who are participating in the diagnosis and treatment under the direction of the physician, including members of the patient’s family, or (ii) the client participating in professional counseling by a professional counselor.

2. Scope of Privilege.
   a. A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purposes of diagnosis or treatment of his/her physical, mental, or emotional condition among himself or herself, his/her physician or persons who are participating in the diagnosis or treatment under the direction of the physician, including members of the patient's family.
   b. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made during counseling between himself or herself, his/her professional counselor or persons who are participating in the counseling under the direction of the professional counselor, including members of the client's family.
3. Who may claim the privilege. The privilege may be claimed by the patient or client, by his/or guardian or conservator, or by the personal representative of a deceased patient or client. The person who was the physician or professional counselor may claim the privilege but only on behalf of the patient of client. His/her authority so to do is presumed in the absence of evidence to the contrary.
4. Limits on application of privilege.
   a. There is no privilege under this Rule for communications relevant to an issue in proceedings to hospitalize the patient for mental or emotional illness if the physician, in the course of diagnosis or treatment, has determined that the patient is in need of hospitalization or if a professional counselor deems it necessary to refer a client to determine if there is need for hospitalization.
   b. If the judge orders an examination of the physical, mental or emotional condition of the patient, communications made in the course thereof are not privileged under this Rule with respect to the particular purpose for which the examination is ordered unless the judge orders otherwise.
   c. There is no privilege under this Rule as to communications relevant to an issue of the physical, mental or emotional condition of the patient in any proceeding in which he/she relies upon the condition as an element of his/her claim or defense or, after the patient's death, in any proceeding in which any party relies upon the condition as an element of his/her claim or defense.
   d. There is no privilege under this Rule in any judicial proceedings regarding injuries to children, incompetents, or disabled persons allegedly caused by parents, guardians or caregivers or in any criminal prosecution involving injury to any child, incompetent or disabled person or the willful failure to report any such injuries. For the purposes of this subsection, the term "injury(ies)" includes a sexual assault as that term is used in the Winnebago Tribe of Nebraska Tribal Code Sections 3-416 through 422.
   e. There is no privilege under this Rule in any judicial proceeding regarding unlawfully obtaining or attempting to obtain (i) a controlled substance, (ii) a written or oral prescription for a controlled substance, or (iii) the administration of a controlled substance from a practitioner. For purposes of this subdivision, the definitions found in the Winnebago Tribe of Nebraska Tribal Code Section 3-801 shall apply. [TCR 11-71]

TITLE 1A
ARTICLE 7
OPINION AND EXPERT TESTIMONY

Rule 1A-701	Opinion testimony by lay witnesses.	Rule 1A-704	Opinion on ultimate issue.
Rule 1A-702	Testimony by experts.	Rule 1A-705	Disclosure of facts or data underlying expert opinion.
Rule 1A-703	Bases of opinion testimony by experts.	Rule 1A-706	Court appointed experts.

Rule 1A-701 Opinion testimony by lay witnesses. If the witness is not testifying as an expert, the witness testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a dear understanding of the witness' testimony or the determination of a fact in issue. [TCR 86-79, 93-85]

Rule 1A-702 Testimony by experts. If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education, may testify thereto in the form of an opinion or otherwise. [TCR 86-79]

Rule 1A-703 Bases of opinion testimony by experts. The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence. [TCR 86-79, 93-85]

Rule 1A-704 Opinion on ultimate issue.

1. Except as provided in subdivision (b), testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.
2. No expert witness testifying with respect to the mental state or condition of a defendant in a criminal case may state an opinion or inference as to whether the defendant did or did not have the mental state or condition constituting an element of the crime charged or of a defense thereto. Such ultimate issues are matters for the trier of fact alone. [TCR 86-79, 93-85]

Rule 1A-705 Disclosure of facts or data underlying expert opinion. The expert may testify in terms of opinion or inference and give reasons therefor without prior disclosure of the underlying facts or data, unless the Court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination. [TCR 86-79, 93-85]

Rule 1A-706 Court appointed experts.

1. Appointment. The Court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The Court may appoint any expert witnesses agreed upon by the parties, and may appoint expert witnesses of its own selection. An expert witness shall not be appointed by the Court unless the witness consents to act. A witness so appointed shall be informed of the witness' duties by the Court in writing, a copy of which shall be filed with the clerk or at a conference in which the parties shall have opportunity to participate. A witness so appointed

shall advise the parties of the witness' findings, if any; the witness' deposition may be taken by any party; and the witness way be called to testify by the Court or any party. The witness shall be subject to cross-examination by each party, including a party calling him/her a witness.

2. Compensation. Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the Court may allow. The compensation thus fixed is payable from the Court fund, said fund to be reimbursed by the parties in such proportion and at such time as the Court directs, and thereafter charged in like manner as other costs.
3. Disclosure of appointment. In the exercise of its discretion, the Court may authorize disclosure to the jury of the fact that the Court appointed the expert witness.
4. Parties' experts of own selection. Nothing in this Rule limits the parties in calling expert witnesses of their own selection. [TCR 86-79, 93-85]

TITLE 1A
ARTICLE 8
HEARSAY

Rule 1A-801	Definitions.	Rule 1A-805	Hearsay within hearsay.
Rule 1A-802	Hearsay rule.	Rule 1A-806	Attacking and supporting credibility of declarant.
Rule 1A-803	Hearsay exceptions; availability of declarant immaterial.		
Rule 1A-804	Hearsay exceptions; declarant unavailable.		

Rule 1A-801 Definitions. The following definitions apply under this article:

1. Statement. A statement is (1) an oral or written assertion, or (2) nonverbal conduct of a person, if it is intended by him/her as an assertion.
2. Declarant. A declarant is a person who makes a statement.
3. Hearsay is a statement, other than one made by the declarant, while testifying at the trial or hearing offered in evidence to prove the truth of the matter asserted.
4. Statements which are not hearsay. A statement is not hearsay if:
   a. Prior statement by witness. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (A) inconsistent with his/her testimony, and was given under oath subject to the penalty of perjury at a trial, hearing or other proceeding or in a deposition, or (B) consistent with his/her testimony and is offered to rebut an express or implied charge against him/her of recent fabrication or improper influence or motive, or (C) one of identification of a person made after perceiving him/her; or
   b. Admission by party-opponent. The statement is offered against a party and is (A) his/her own statement, in either his/her individual or a representative capacity or (B) a statement of which he/she has manifested his/her adoption or belief in its truth, or (C) a statement by a person authorized by him/her to make a statement concerning the subject, or (D) a statement by his/her agent or servant concerning a matter within the scope of his/her agency or employment, made during the existence of the relationship, or (E) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy. [TCR 86-79]

Rule 1A-802 Hearsay rule. Hearsay is not admissible except as provided by these Rules or by other Rules adopted by resolution of the Winnebago Tribe of Nebraska. [TCR 86-79, 93-85]

Rule 1A-803 Hearsay exceptions; availability of declarant immaterial. The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

1. Present sense impression. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.
2. Excited utterance. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.
3. Then existing mental, emotional, or physical condition. A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

4. Statements for purposes of medical diagnosis or treatment. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.
5. Recorded recollection. A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.
6. Records of regularly conducted activity. A memorandum, reports record, or data compilation, in any form, of acts, events, or conditions, opinions or diagnoses, made at or near the time, by, or from information transmitted by a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstance of preparation indicate lack of trustworthiness. The term business, as used in this paragraph, includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.
7. Absence of entry in records kept in accordance with the provision of paragraph (6). Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of paragraph (6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.
8. Public records and reports. Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (A) the activities of the office or agency, or (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel, or (C) in civil actions and proceedings and against the Tribe in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness.
9. Records of vital statistics. Records or data compilations, in any form, of birth, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.
10. Absence of public record or entry. To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with Rule 1A-902, or testimony, that diligent search failed to diagnose the record, report, statement, or data compilation, or entry.
11. Records of religious organizations. Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood, marriage, or other similar acts of personal or family history, contained in a regularly kept record of a religious organization.
12. Marriage, baptismal, and similar certificates. Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

13. Family records. Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engraving on urns, crypts, or tombstones, or the like.
14. Records of documents affecting an interest in property. The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.
15. Statements in documents affecting an interest in property. A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purpose of the document.
16. Statements in ancient documents. Statements in a document in existence twenty years or more the authenticity of which is established.
17. Market reports, commercial publications. Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.
18. Learned treatises. To the extent called to the attention of an expert witness upon cross-examination, or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert witness or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.
19. Reputation concerning personal or family history. Reputation among members of a person's family by blood, adoption, or marriage, or among a person's associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history.
20. Reputation concerning boundaries or general history. Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the Tribe or community or state or nation in which located.
21. Reputation as to character. Reputation of a person's character among associates or in the community.
22. Judgment of previous conviction. Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment but not indulging when offered by the government in a criminal prosecution for purposes other than impeachment, the judgments against persons other than the accused in a criminal case. The pendency of an appeal may be shown but does not affect admissibility.
23. Judgment as to personal family or general history, or boundaries. Judgments as proof of matters of person, family or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation.
24. Other exceptions. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the Court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these Rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity

to prepare to meet it, the proponent's intention to offer the statement and the *participation* of it, including the name and address of the declarant. [TCR 86-79, 93-85]

Rule 1A-804 Hearsay exceptions; declarant unavailable.

1. Definition of unavailability. Unavailability as a witness includes situations in which the declarant:
   a. Is exempted by ruling of the Court on the ground of privilege from testifying concerning the subject matter of the declarant's statement; or
   b. Persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the Court to do so; or
   c. Testifies to a lack of memory of the subject matter of the declarant's statement; or
   d. Is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or
   e. Is absent from the hearing and the proponent of a statement has been unable to procure the declarant's attendance (or in the case of a hearsay exception under subdivision (b)(2), (3), or (4), the declarant's attendance or testimony by process or other reasonable means. A declarant is not available as a witness if exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying.
2. Hearsay exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:
   a. Former testimony. Testimony given as a witness at another hearing of the same or a different proceeding or in a deposition taken in compliance with law in the course of the same or another proceeding if the party against whom the testimony is now offered, or, in a civil action or proceeding a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.
   b. Statement under belief of impending death. In a prosecution for homicide or in a civil action or proceeding a statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death.
   c. Statement against interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable man in his/her position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances dearly indicate the trustworthiness of the statement.
   d. Statement of personal or family history. (A) statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or (B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.
   e. Other exceptions. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the Court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes

of these Rules and the interest of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his/her intention to offer the statement and the particulars of it, including the name and address of the declarant. [TCR 86-79, 93-85]

Rule 1A-805 Hearsay within hearsay. Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in these Rules. [TCR 86-79]

Rule 1A-806 Attacking and supporting credibility of declarant. When a hearsay statement, or a statement defined in Rule 1A-801(d)(2),(C), (D), or (E), has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with the declarant's hearsay statement, is not subject to any requirement that the declarant may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross-examination. [TCR 86-79, 93-85]

TITLE 1A
ARTICLE 9
AUTHENTICATION AND IDENTIFICATION

Rule 1A-901 Requirement of authentication or identification.
Rule 1A-902 Self-authentication.
Rule 1A-903 Subscribing witness' testimony unnecessary.

Rule 1A-901 Requirement of authentication or identification.

1. General provision. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.
2. Illustrations. By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this Rule:
   a. Testimony of witness with knowledge. Testimony that a matter is what it is claimed to be.
   b. Non-expert opinion on handwriting. Non-expert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.
   c. Comparison by trier or expert witness. Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated.
   d. Distinctive characteristics and the like. Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.
   e. Voice identification. Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.
   f. Telephone conversations. Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if (A) in the case of a person, circumstances, including self-identification, show the person answering to be the one called, or (B) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.
   g. Public records or reports. Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.
   h. Ancient documents or data compilation. Evidence that a document or data compilation, in any form (A) is in such condition as to create no suspicion concerning its authenticity, (B) was in a place where it, if authentic, would likely be, and (C) has been in existence twenty years or more at the time it is offered.
   i. Process or system. Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.
   j. Methods provided by statute or rule. Any method of authentication or identification provided by resolution of the Winnebago Tribe of Nebraska or by other rules prescribed by the court of appeals pursuant to statutory authority. [TCR 86-79, 93-85]

Rule 1A-902 Self-Authentication. Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

1. Domestic public documents under seal. A document bearing a seal purporting to be that of the United States, or of any Indian tribe, state, district, commonwealth territory, or his/her possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and signature purporting to be an attestation or execution.
2. Domestic public documents not under seal. A document purporting to bear the signature in an official capacity of an officer or employee of any entity included in paragraph (1) hereof, having no seal if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.
3. Foreign public documents. A document purporting to be executed or attested in an official capacity by a person authorized by the laws of a foreign country to nuke the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position (A) of the executing or attesting person, or (B) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the Court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.
4. Certified copies of public records. A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph (1), (2), or (3) of this Rule or with any resolution of the Winnebago Tribe of Nebraska or Rule prescribed by the court of appeals pursuant to statutory authority.
5. Official publications. Books, pamphlets, or other publications purporting to be issued by public authority.
6. Newspapers and periodicals. Printed materials purporting to be newspapers or periodicals.
7. Trade inscriptions and the like: descriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.
8. Acknowledged documents. Documents accompanied by a certificate of acknowledgment executed in the manner provided by law, by a notary public, or other officer authorized by law to take acknowledgments.
9. Commercial paper and related documents. Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.
10. Presumptions under Acts or Ordinances. Any signature, document, or other matter declared by resolution of the Tribal Council to be presumptively or prima facie genuine or authentic. [TCR 86-79, 93-84, 93-85]

Rule 1A-903 Subscribing witness' testimony unnecessary. The testimony of a subscribing witness is not necessary to authenticate a writing unless required by the laws of the jurisdiction whose laws govern the validity of the writing. [TCR 86-79]

TITLE 1A
ARTICLE 10
CONTENTS OF WRITINGS, RECORDINGS AND PHOTOGRAPHS

Rule 1A-1001 Definitions.
Rule 1A-1002 Requirement of original.
Rule 1A-1003 Admissibility of duplicates.
Rule 1A-1004 Admissibility of other evidence of contents.
Rule 1A-1005 Public records.
Rule 1A-1006 Summaries.
Rule 1A-1007 Testimony or written admission of party.
Rule 1A-1008 Functions of Court and jury.

Rule 1A-1001 Definitions. For the purpose of this Article the following definitions are applicable:

1. Writings and recordings. Writings and recordings consist of letters, words, or numbers or their equivalent, set down by handwriting, typewriting, printing, Photostatting, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.
2. Photographs. Photographs include still photographs, X-ray films, video tapes, and motion pictures.
3. Original. An original of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it, an original of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an original.
4. Duplicate. A duplicate is a counterpart produced by the same impression as the original or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording or by chemical reproduction, or by other equivalent techniques which accurately reproduces the original. [TCR 86-79]

Rule 1A-1002 Requirement of original. To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these Rules or by resolution of the Tribal Council. [TCR 86-79, 93-84]

Rule 1A-1003 Admissibility of duplicates. A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original. [TCR 86-79]

Rule 1A-1004 Admissibility of other evidence of contents. The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if:

1. Originals lost or destroyed. All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; or
2. Original not obtainable. No original can be obtained by any available judicial process or procedure; or
3. Original in possession of opponent. At a time when an original was under the control of the party against whom offered, he/she was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing and he/she does not produce the original at the hearing; or
4. Collateral matters. The writing, recording, or photograph is not closely related to a controlling issue. [TCR 86-79]

Rule 1A-1005 Public records. The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form, if otherwise admissible, may be proved by copy, certified as correct in accordance with Rule 1A-902 or testified to be correct by a witness who has compared it with the original. If a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given. [TCR 86-79]

Rule 1A-1006 Summaries. The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in Court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying or both, by other parties at reasonable time and place. The Court may order that they be produced in Court. [TCR 86-79]

Rule 1A-1007 Testimony or written admission of party. Contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by his/her written admission, without accounting for the non-production of the original. [TCR 86-79]

Rule 1A-1008 Functions of Court and jury. When the admissibility of other evidence of contents of writings, recordings, or photographs under these Rules depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the Court to determine in accordance with the provisions of Rule 1A-804. However, when an issue is raised (a) whether the asserted writing ever existed, or (b) whether another writing recording or photograph produced at the trial is the original, or (c) whether other evidence of contents correctly reflects the contents, the issue is for the trier of fact to determine as in the case of other issues of fact. [TCR 86-79]

TITLE 1A
ARTICLE 11
MISCELLANEOUS RULES

Rule 1A-1101 Applicability of rules.
Rule 1A-1102 Amendments.
Rule 1A-1103 Title.

Rule 1A-1101 Applicability of rules.

1. These Rules apply to all criminal and civil controversies arising from any transaction or occurrence occurring on land which is within the boundaries of the Winnebago reservation.
2. These Rules apply generally to civil actions and proceedings, to criminal actions and proceedings and to contempt proceedings except those in which the Court may act summarily.
3. The Rule with respect to privileges applies at all stages of all actions, cases, and proceedings.
4. The Rules (other than with respect to privileges) do not apply in the following situations:
   a. When the Court mistake preliminary findings of fact in order to rule on the admissibility of evidence under Rule 1A-804.
   b. Proceeds for extradition, preliminary examinations in criminal cases, sentencing granting or revoking parole or probation, issuance of warrants for arrest, criminal summonses, and search warrants; and proceedings with respect to release on bail or otherwise. [TCR 86-79]

Rule 1A-1102 Amendments. The court of appeals shall have the power to prescribe amendments to the Winnebago Rules of Evidence. Such amendments shall not take effect until they have been reported to the Tribal Council by the chief justice and until the expiration of ninety days after they have been so reported; but if the Tribal Council within that time shall by resolution disapprove any amendment so reported it shall not take effect. The effective date of any amendment so reported may be deferred by the Tribal Council to a later date or until approved by the Council. Any Rule, whether proposed or in force, may be amended by Act or ordinance of the Tribal Council. Any provision of law in force at the expiration of such time and in conflict with any such amendment not disapproved shall be of no further force or effect after such amendment has taken effect. Any such amendment creating, abolishing, or modifying a privilege shall have no force or effect unless it shall be approved by Act or Ordinance of the Tribal Council. [TCR 86-79]

Rule 1A-1103 Title. These Rules may be known and cited as the Winnebago Rules of Evidence, or the Rules of Evidence of the Winnebago Tribe of Nebraska. [TCR 86-79]

TITLE 1B
TABLE OF REVISIONS

The following table is included in this title as a guide for determining whether each article properly reflects the current version. This table will be updated with the revision of each article.

Through usage and supplementation, pages in bound titles can be inserted and removed when sections are revised on an article-by-article basis. This table should be placed before the Table of Contents in the title.

The "Article" column lists each article, and the "Section" column lists any corresponding sections that have been revised, in sequence. The "Revised Date" column reflects the effective date of the revision (e.g., "6/20/15"). If an article is not listed in the table, it has not been revised since the December 2015 Winnebago Tribal Code update and distribution.

Article	**Section**	**Revised Date**

TITLE 1B
RULES OF CRIMINAL PROCEDURE
(Redesignated February 24, 1994)

ARTICLE 1
SCOPE, PURPOSE, AND CONSTRUCTION

Rule 1B-101 Scope, purpose and construction.

TITLE 1B
ARTICLE 2
PRELIMINARY PROVISIONS

Rule 1B-201 Prosecution of offenses.
Rule 1B-202 Rights of defendant.
Rule 1B-203 Limitation of prosecution.
Rule 1B-203.1 Time computations.
Rule 1B-204 Extradition.

TITLE 1B
ARTICLE 3
PROCEEDINGS BEFORE TRIAL

Rule 1B-301 The complaint.
Rule 1B-302 Arrest warrant or summons to appear: contents; service.
Rule 1B-302.1 Service of arrest warrants and summons.
Rule 1B-302.2 Citation instead of arrest.
Rule 1B-303 Search and seizure.
Rule 1B-304 Arrest.
Rule 1B-304.1 Arrest in hot pursuit.
Rule 1B-304.2 Limitations on arrest in the home.
Rule 1B-304.3 Notification of rights.
Rule 1B-304.4 Telephone calls.
Rule 1B-305 Arraignment.
Rule 1B-306 Pre-trial divers.
Rule 1B-307 Commitments.
Rule 1B-308 Bail.
Rule 1B-309 Joinder.
Rule 1B-310 Pleas.
Rule 1B-310.1 Withdrawing guilty plea.
Rule 1B-310.2 Plea Bargaining.
Rule 1B-311 Pleading and motions before trial: defenses and objections.
Rule 1B-312 Joinder of offenses.
Rule 1B-313 Discovery and inspection.
Rule 1B-314 Subpoena.
Rule 1B-315 Dismissal.

TITLE 1B
ARTICLE 4
TRIAL

Rule 1B-401 Trial by jury or by the Court.
Rule 1B-402 Trial jurors.
Rule 1B-403 Order of trial.
Rule 1B-404 Trial by judicial panel.
Rule 1B-405 Judge disability.
Rule 1B-406 Evidence.
Rule 1B-407 Expert witnesses and interpreters.
Rule 1B-408 Motion for judgment of acquittal; directed verdict.
Rule 1B-409 Instructions.
Rule 1B-410 Verdict.
Rule 1B-411 Regulation of conduct in the Courtroom.
Rule 1B-412 Harmless error and plain error.

TITLE 1B
ARTICLE 5
JUDGMENT
(As revised February 19, 2014)

Rule 1B-50l Judgment.
Rule 1B-502 Sentence.
Rule 1B-503 General sentencing provisions.
Rule 1B-504 New trial.
Rule 1B-505 Arrest of judgment.
Rule 1B-506 Correction or reduction of sentence.
Rule 1B-507 Clerical mistakes.

TITLE 1B
ARTICLE 6
APPEAL

Rule 1B-601 Right of appeal; how taken.
Rule 1B-602 Stay of judgment and relief pending review.

TITLE 1B
ARTICLE 7
MISCELLANEOUS PROVISIONS
(As revised February 19, 2014)

Rule 1B-701 Continuance.
Rule 1B-702 Disbursement of money and valuables collected.
Rule 1B-703 Habeas corpus.
Rule 1B-704 Disposition of seized property.
Rule 1B-705 Designation of offenses.
Rule 1B-706 Maximum fines and sentences, payment schedules; credit.
Rule 1B-707 Bail schedule for Class III offenses.
Rule 1B-708 Diversion and probation costs.
Rule 1B-709 Sex offenders.
Rule 1B-710 Additional findings for sex offenses.

TITLE 1B
RULES OF CRIMINAL PROCEDURE
(Redesignated February 24, 1994.)

ARTICLE 1
SCOPE, PURPOSE, AND CONSTRUCTION

Rule 1B-101 Scope, purpose and construction.

Rule 1B-101 Scope, purpose and construction.

1. These rules govern the procedure in all criminal proceedings in the Winnebago Tribal Court and all preliminary or supplementary procedures as specified herein.
2. Every proceeding in which a person is charged with a criminal offense of any degree and brought to trial and punished is a criminal proceeding.
3. These Rules are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay. [TCR 86-79]

TITLE 1B
ARTICLE 2
PRELIMINARY PROVISIONS

Rule 1B-201 Prosecution of offenses.
Rule 1B-202 Rights of defendant.
Rule 1B-203 Limitation of prosecution.
Rule 1B-203.1 Time computations.
Rule 1B-204 Extradition.

Rule 1B-201 Prosecution of offenses.

1. No person shall be punished for an offense except upon a legal conviction, including a plea or admission of guilt or nolo contendere in open Court, by a Court of competent jurisdiction provided, however, that no ulceration or other disposition of one accused of an offense prior to trial in accordance with these Rules shall be deemed punishment.
2. All criminal proceedings shall be prosecuted in the name of the Winnebago Tribe of Nebraska, plaintiff, against the person charged with an offense, referred to as the defendant. [TCR 86-79]

Rule 1B-202 Rights of defendant. In all criminal proceedings, the defendant shall have the following rights:

1. To appear and defend in person or by counsel except:
   a. Trial of traffic or hunting offense not resulting in injury to any person, nor committed while using alcohol or nonprescription drugs may be prosecuted without the presence of the defendant upon a showing that the defendant received actual notice five days prior to the proceeding. The defendant may represent him/herself or be represented by a lay advocate who has been admitted to the Tribal Bar, or by any attorney admitted to practice before the Winnebago Tribal Court, but no defendant shall have the right to have appointed professional counsel provided at the Tribe's expense. However, the privilege to have counsel appointed may be granted by the Court as may be provided in the rules of the Court relating to attorneys and lay advocates.
2. To be informed of the nature of the charges against him/her and to have a copy thereof.
3. To testify in his/her own behalf, or to refuse to testify regarding the charge against him/her, provided, however, that once a defendant takes the stand to testify on any matter relevant to the immediate proceeding against him/her, he/she shall be deemed to have waived all right to refuse to testify in that criminal proceeding. He/she shall not, however, be deemed to have waived his/her right to remain silent in other distinct phases of the criminal process.
4. To confront and cross-examine all witnesses against him/her subject to the Rules of Evidence.
5. To compel by subpoena the attendance of witnesses in his/her own behalf.
6. To have a speedy public trial by an impartial judge or jury as provided in these Rules.
7. To appeal in all cases as provided in Article 6 of Title 1.
8. To prevent his/her present spouse from testifying against him/her, except:
   A. In any case in which the offense charged is alleged to have been committed against the spouse, or the children of either the spouse or the defendant, or against the marital relationship;
   B. Any testimony by the spouse in the defendant's behalf will be deemed a waiver of this privilege.
9. Not to be twice put in jeopardy by the Winnebago Tribal Court for the same offense. [TCR 86-79]

Rule 1B-203 Limitation of prosecution.

1. Every criminal proceeding shall be commenced within three (3) years of the date of commission of the offense, or prosecution for that offense shall be forever barred.
2. If an offense is committed by actions occurring on two (2) or more separate days, the offense will be deemed to have been committed on the day the final act causing the offense to be complete occurred.
3. Time spent outside the jurisdiction of the Winnebago Tribe of Nebraska for the purpose of avoiding prosecution shall not be counted toward the three year period to begin prosecution. [TCR 86-79]

Rule 1B-203.1 Time computations. In computing any period of time in the Rules, the day of the act or event from which the designated period begins to run shall not be included, and the last day of the period will be included unless it is a Saturday or Sunday or a legal holiday. If a time period prescribed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall not be counted, provided that weekend arrests shall be arraigned no later than Monday of the following week. [TCR 86-79]

Rule 1B-204 Extradition.

1. The Chairman of the Winnebago Tribal Council of the Winnebago Tribe of Nebraska, or any individual designated by him/her to act in his/her absence, shall have the authority to have apprehended and delivered up to the executive authority of any Indian tribe, state, or the United States, or Canada or Mexico, any person charged with or convicted of an offense, who is found within the exterior boundaries of the Winnebago Reservation.
2. A formal demand for extradition must be made in writing by the demanding sovereign alleging that the individual was present within the jurisdiction of the demanding sovereign at the time of the commission of the alleged crime and that, thereafter, he/she left the jurisdiction of that sovereign. Accompanying the formal demand shall be a copy of any warrant outstanding against the individual or a copy of any judgment of conviction or any sentence imposed in execution thereof, or a statement by an appropriate agent of the demanding sovereign that the individual has escaped from confinement or has violated the terms or conditions of his/her bail, probation, or parole. Additionally, the Tribal Council Chairman shall receive a copy of any indictment, a copy of any information or complaint supported by an affidavit, or a copy of an affidavit made before a magistrate or judge in said jurisdiction. The indictment, information, complaint, or affidavit made before a magistrate or judge must substantially charge the individual whose extradition is demanded with having committed an offense under the laws of that sovereign. The copy of the indictment, information, complaint, affidavit, judgment of conviction, or sentence shall be authenticated by an appropriate agent of the demanding sovereign.
3. If the Tribal Council Chairman determines that the demand should be complied with, he/she shall cause a judge of the Winnebago Tribal Court to sign a warrant for apprehension which shall be directed to the Winnebago law enforcement office for execution. The warrant shall authorize any Winnebago law enforcement officer to apprehend the individual at any time and any place where he/she may be found within the Winnebago Reservation, and to command the aid of all Winnebago law enforcement officers in the execution of the warrant.
4. No individual apprehended under such warrant shall be delivered directly over to an agency of the demanding sovereign. He/she shall first be taken forthwith before a Tribal judge who shall inform him/her of the demand made for his/her extradition, the offense with which he/she has been charged or of which he/she has been convicted, his/her right to demand and secure legal counsel, and his/her right to a full hearing to challenge the proposed extradition.
5. A full hearing shall be held within seventy-two hours after the individual is apprehended to test the validity of the arrest. It will be presumed that the individual arrested desires a full hearing

unless the individual waives such hearing by executing in the presence of a Tribal judge a writing which states that he/she consents to the return to the demanding sovereign without a full hearing on the proposed extradition.

6. If, from the examination of the evidence presented at a hearing before a Tribal judge, it appears that the individual held is, in fact, the individual whose extradition is demanded and that he/she has fled from justice, the judge shall, by an order reciting his/her determination, commit him/her to a Tribal detention facility until such time, not exceeding thirty days, as the individual is surrendered to an agent of the demanding sovereign. Reasonable costs of detention of said individuals are to be paid by the demanding sovereign.
7. Unless the offense, with which the individual has been charged or of which he/she has been convicted, is shown to be an offense punishable by death or life imprisonment under the laws of the jurisdiction in which it was committed, the Tribal judge may, in lieu of confinement, admit the person arrested to bail by bond, with sufficient sureties in such a sum as he/she deems proper, until he/she is surrendered to an agent of the demanding sovereign.
8. The Tribal Council Chairman shall also have the authority to demand the return of an individual charged with a crime, with escaping from confinement, or with violating the term or conditions of his/her probation, or parole within the Winnebago reservation, from the executive authority of any other sovereign authorized to receive such demand.
9. When the return to the Winnebago reservation of an individual charged with or convicted of a crime within the reservation is required, a Tribal judge shall present to the Tribal Council Chairman a written application for the return of such individual. The application shall state the name of the individual, the crime with which he/she has been charged or of which he/she has been convicted, the approximate time, place and circumstances of its commission, and the jurisdiction in which he/she is believed to be, including location of the individual in such jurisdiction, at the time the application is made. The application shall certify that, in the opinion of the judge, the ends of justice require the arrest and return of the individual to the reservation for trial or other hearing and that the proceeding is not instituted to enforce a private claim.
10. An individual returned to the reservation by means of extradition based on a criminal charge shall not be subject to personal service of process in any civil action arising out of the same circumstances involved in the criminal proceeding until he/she has been finally convicted or, if acquitted, until he/she has had reasonable opportunity to return to the jurisdiction from which he/she was extradited.
11. Nothing contained in these procedures shall be deemed to constitute a waiver by the Winnebago Tribe of their right, power, or privilege to try such demanded individual for any crime committed within the reservation or of their right, power, or privilege to regain custody of such individual by extradition proceedings for the purpose of trial, sentence, or punishment for any crime committed within the reservation. [TCR 86-79]

TITLE 1B
ARTICLE 3
PROCEEDINGS BEFORE TRIAL

Rule 1B-301 The complaint.
Rule 1B-302 Arrest warrant or summons to appear: contents; service.
Rule 1B-302.1 Service of arrest warrants and summons.
Rule 1B-302.2 Citation instead of arrest.
Rule 1B-303 Search and seizure.
Rule 1B-304 Arrest.
Rule 1B-304.1 Arrest in hot pursuit.
Rule 1B-304.2 Limitations on arrest in the home.
Rule 1B-304.3 Notification of rights.
Rule 1B-304.4 Telephone calls.
Rule 1B-305 Arraignment.
Rule 1B-306 Pre-trial divers.
Rule 1B-307 Commitments.
Rule 1B-308 Bail.
Rule 1B-309 Joinder.
Rule 1B-310 Pleas.
Rule 1B-310.1 Withdrawing guilty plea.
Rule 1B-310.2 Plea Bargaining.
Rule 1B-311 Pleading and motions before trial: defenses and objections.
Rule 1B-312 Joinder of offenses.
Rule 1B-313 Discovery and inspection.
Rule 1B-314 Subpoena.
Rule 1B-315 Dismissal.

Rule 1B-301 The complaint.

1. Complaint. Every criminal proceeding shall be commenced by the filing of a criminal complaint. The complaint is a sworn written statement of the essential facts charging that a named individual(s) has committed a particular offense.
2. Contents of complaints. Complaints shall contain:
   a. The name and address of the Court;
   b. The name of the defendant, if known, or some other name, if not known, plus whatever description of the defendant is known;
   c. The signature of the Tribal prosecutor or his/her assistant and his/her typewritten name;
   d. A written statement describing in ordinary and plain language the facts of the offense alleged to have been committed including a reference to the time, date, and place as nearly as may be known;
   e. The person against whom or against whose property the offense was committed and the names of the witness of the Tribe if known, otherwise no statement need be made;
   f. The general name and Tribal Code title and section number of the alleged offense.
3. Error. No minor omission from or error in the form of the complaint shall be grounds for dismissal of the case unless some significant prejudice against the defendant can be shown to result therefrom.
4. Time of filing complaint. A complaint may be filed at any time within the period prescribed by Article 3 of this Title, provided, that if an accused has been arrested without a warrant the complaint shall be filed immediately or in no case later than the time of arraignment.
5. The clerk or prosecutor shall assist all parties with writing and filing criminal complaints.

Rule 1B-302 Arrest warrant or summons to appear; contents; service.

1. If it appears from the complaint that an offense has been charged against the defendant, a judge of the Tribal Court shall issue a summons to the defendant to bring him/her before the Court. An arrest warrant shall issue only upon a complaint charging an offense by the defendant against the criminal law of the Winnebago Tribe of Nebraska supported by the testimony or affidavit of some

person having knowledge of the facts of the case through which the judge can determine that probable cause exists to believe that an offense has been committed and that the defendant committed it.

2. Issuance of arrest warrants or summons. Unless the Tribal judge has reasonable grounds to believe that the person will not appear on a summons, a summons shall be issued instead of an arrest warrant.
3. Contents of arrest warrants. The warrant of arrest shall be signed by the judge issuing it, and shall contain the name and address of the Court; the name of the defendant, or if the correct name is unknown, any name by which the defendant is known and the defendant's description; and a description of the offense charged with a reference to the section of the Winnebago Code of Criminal offenses alleged to have been violated. It shall order and command the defendant be arrested and brought before a judge of the Tribal Court to enter a plea.
4. Contents of summons. A criminal summons shall contain the same information as an arrest warrant except that, instead of commanding the arrest of the accused, it shall order the defendant to appear before a Tribal judge within five days or on some certain day to enter a plea to the charge, and a notice that upon the defendant's failure to appear, an arrest warrant shall issue and that the defendant may be further charged with disobeying a lawful order of the Court. If the defendant fails to appear in response to a summons, or refuses to accept the summons, an arrest warrant shall issue. [TCR 86-79]

Rule 1B-302.1 Service of arrest warrants and summons.

1. Warrants for arrest and criminal summons may be served by any Tribal or federal law enforcement officer or any adult person authorized in writing by the Tribal judge. Service may be made at any place within the jurisdiction of the Tribe.
2. Warrants of arrest and summons are to be served at a person's home between the hours of 7:00 a.m. and 9:00 p.m. unless an authorization to serve such process at night is provided by a Tribal judge. Warrants and summons may be served at any time on an individual found in a public place.
3. The date, time, and place of service or arrest shall be written on the warrant or summons along with the signature of the person serving such, and the warrant returned to the Court. A copy, so signed, shall be given to the person served or arrested at the time of arrest if reasonably possible, or as soon thereafter as is reasonably possible.
4. An officer need not have the warrant in his/her possession at the time of arrest, but if not, he/she shall inform the defendant of the charge, that a warrant of arrest has been issued and shall provide the defendant a copy of the warrant not later than the time of arraignment. [TCR 86-79]

Rule 1B-302.2 Citation instead of arrest.

1. Whenever a law enforcement officer would be empowered to make an arrest without a warrant but has reasonable grounds to believe an immediate arrest is not necessary to preserve the public peace and safety, he/she may, in his/her discretion, issue the defendant a citation instead of taking said person into custody. Such citation shall be considered a Court order. Provided that in the case of infractions, the officer may issue a citation, and may not take said person into custody.
2. Contents of citation.
    a. The citation shall contain the name and address of the Court, the name or address and description of the defendant, a description of the offense charged, and the signature of the law enforcement officer who issued the citation.
    b. The citation shall contain an agreement by the defendant to appear before a Tribal judge within five days or on a day certain to answer to the charge and the signature of the defendant.

c. The citation shall contain a notice that upon defendant's failure to appear, an arrest warrant shall issue and that the defendant may be further charged with disobeying a lawful order of the Court.

d. One copy of the citation shall be given to the defendant and two copies shall be delivered to the prosecutor.

Rule 1B-303 Search and seizure.

1. Search warrants. A search warrant is an order directed to any Tribal or federal law enforcement officer directing him/her to search a particular place for described persons or property and if found to seize them.
2. A warrant shall issue order on an affidavit or affidavits sworn to before a Tribal judge and establishing grounds for issuing the warrant. If the judge is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, he/she shall issue a warrant identifying the property and naming or describing the person or place to be searched. The finding of probable cause may be based on hearsay evidence either in whole or in part. Before ruling on a request for a warrant, the judge may require the defendant to appear personally and be examined under oath. The warrant shall be directed to any police or law enforcement officer or official and shall command such person or persons to search, within a specified period of time not to exceed ten days, the person or place named for the property specified.
3. Contents of search warrant. Every search warrant shall contain the name and address of the Court and the signature of the judge issuing the warrant. It shall specifically describe the place to be searched and the items to be searched for and seized. The search warrant shall be directed to any Tribal or federal law enforcement officer and contain the date on which it was issued.
4. Service of search warrants. Search warrants shall be served by any Tribal or federal law enforcement officer between the hours of 7:00 a.m. and 9:00 p.m., unless otherwise directed on the warrant by the judge who issued it. A copy of the warrant shall be left with an occupant or owner over sixteen years of age at the place searched if present during said search. If the place to be searched is not occupied at the time of the search, a copy of the warrant shall be left in some conspicuous place on the premises.
5. Inventory. The officer serving a search warrant shall make a signed inventory of all property seized and attach such inventory to the warrant. A copy of the inventory and search warrant shall be left with an occupant or owner over sixteen years of age if present during the search or left in a conspicuous place with the search warrant if an occupant is not present during the search.
6. Return of search warrants.
   a. The officer shall endorse on the warrant the date, time, and place of service and the signature of the officer serving it.
   b. The warrant shall be returned to the Court with an inventory of property seized within twenty four hours of service, Saturdays, Sundays, and legal holidays excluded.
   c. In every case the warrant shall be returned within ten (10) days of the date of issuance.
7. Property subject to seizure. Property which is subject to seizure is property in which there is probable cause to believe is:
   a. Stolen, embezzled, contraband, or otherwise criminally possessed; or
   b. Which is or has been used to commit criminal offense; or
   c. Property which constitutes evidence of the commission of a criminal offense.
8. Warrantless searches. A law enforcement officer may conduct a search without a warrant only:
   a. Incident to a lawful arrest; or
   b. With the consent of the person to be searched; or
   c. When he/she has reasonable cause to believe that the person searched may be armed and dangerous; or

d. When the search is of a vehicle capable of being moved and the officer has probable cause to believe that it contains property subject to seizure.

e. In any other circumstances wherein federal law has held that warrant prior to the search in those circumstances would not be unreasonable.

9. A person aggrieved by an unlawful search and seizure may move the Tribal Court for the return of the property on the grounds that he/she is entitled to lawful possession of the property illegally seized. The judge may receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted, the property shall be returned and shall not be admissible at any hearing or trial unless it is subsequently seized in a lawful manner.

10. A law enforcement officer may stop any person in a public place whom he/she has probable cause to believe is in the act of committing an offense, or has committed an offense, or is attempting to commit an offense and demand of him/her his/her name, address, an explanation of his/her actions and may, if he/she has reasonable grounds to believe his/her own safety or the safety of others nearby is endangered, conduct a frisk type search for weapons of such person.

11. The term property is used in this Rule to include documents, books, papers, and any other tangible object. The term daytime as used in this Rule shall mean the hours from 6:00 a.m. to 10:00 p.m. according to local time. [TCR 86-79]

Rule 1B-304 Arrest.

1. An arrest is the taking of a person into custody in the manner authorized by law. An arrest may be made by either a police or law enforcement officer or by a private person.

2. A police or law enforcement officer may make an arrest in obedience to an arrest warrant, or he/she may, without a warrant, arrest a person:

   a. For an offense committed in his/her presence.

   b. When he/she has reasonable cause for believing the person to have committed an offense, although not in his/her presence, and there is reasonable cause for believing that such person before a warrant can be obtained may:

      i. Flee the jurisdiction or conceal him/herself to avoid arrest, or

      ii. Destroy or conceal evidence of the commission of an offense, or

      iii. Injure or annoy another person or damage property belonging to another person.

   c. When he/she has reasonable cause for believing the person arrested has committed an offense in violation of 18 U.S.C. Section 11-53 (Major Crimes Act) although not in his/her presence;

   d. When an offense in violation of 18 U.S.C. Section 11-53 (Major Crimes Act) has, in fact, been committed and he/she has reasonable cause to believe the person arrested committed such offense;

3. A private person may arrest another, for prompt delivery to a law enforcement officer:

   a. When an offense is committed or attempted in his/her presence;

   b. When the person arrested has committed an offense in violation of the Major Crimes Act although not in his/her presence.

   c. When an arrest for that person is in fact outstanding.

4. Any person making an arrest may orally summon as many persons as he/she deems necessary to help him/her.

5. If the offense charged is an offense in violation of the Major Crimes Act, the arrest may be made at any time of the day or night, otherwise the arrest pursuant to a warrant cannot be made at night unless such is specifically authorized by the issuing judge.

6. Any law enforcement officer, upon making an arrest:

   a. Must inform the person to be arrested of his/her intention to arrest him/her, of the cause or reasons for the arrest, and his/her authority to make it, except when the person to be arrested is actually engaged in the commission of, or an attempt to commit an offense, or

is pursued immediately after its commission, or an escape, or if such is not reasonably possible under the circumstances;

b. Must show the warrant of arrest if such exists and is demanded as soon as is practicable;

c. May use reasonable force and use all necessary means to effect the arrest if the person to be arrested either flees or forcibly resists after receiving information of the officer's intent to arrest;

d. May search the person arrested and take from him/her and put into evidence all weapons he/she may have about his/her person;

e. Shall, as soon as is reasonably possible, deliver the person arrested to a police office or do as commanded by the arrest warrant or deliver the person arrested to the jail and obtain a complaint and arrest warrant. [TCR 86-79]

Rule 1B-304.1 Arrest in hot pursuit.

1. Any law enforcement officer otherwise empowered to arrest a person within this jurisdiction may continuously pursue such person from a point of initial contact within the jurisdiction of the Winnebago Tribe to any point of arrest within or without the Winnebago Tribe's jurisdiction, and such arrest shall be valid, provided, that such officer shall respect and comply with the extradition requirements of the jurisdiction in which the arrest is finally made, if applicable.
2. Any law enforcement officer commissioned by the federal government, any Indian tribe, or the state when in hot and continuous pursuit of any person for the commission of a felony within such other jurisdiction may arrest such person within the jurisdiction of the Winnebago Tribe of Nebraska, provided, that any person so arrested shall be forthwith delivered to a Winnebago police officer for a show cause hearing pursuant to the extradition laws of the Winnebago Tribe of Nebraska. [TCR 86-79]

Rule 1B-304.2 Limitations on arrests in the home. Pursuant to this Article, any arrest made in a residential dwelling shall be:

1. By a law enforcement officer pursuant to an arrest warrant; or
2. By a law enforcement officer for an offense committed in the home either in the presence of the officer or immediately before his/her arrival; or
3. By a law enforcement officer in continuous pursuit of a person who flees to his/her home to avoid arrest. [TCR 86-79]

Rule 1B-304.3 Notification of rights. Upon arrest, the defendant shall be notified that he/she has the following rights:

1. The right to remain silent and that any statements made by him/her may be used against him/her in Court.
2. That he/she has the right to obtain an attorney at his/her own expense and to have an attorney present at any questioning; or that he/she may consult with the Tribe's public defender.
3. That if he/she wishes to answer the questions of the police, he/she may stop or request time to speak with his/her attorney or the public defender at any point in the questioning. [TCR 86-79]

Rule 1B-304.4 Telephone calls. Upon request, any person arrested has the right to make at least one completed telephone call to a friend or bail bondsman and at least one completed call to a lay counselor or attorney. Denial of the right to make a call shall be grounds for dismissal of the case, unless the judge finds there was a good reason for the denial. [TCR 86-79]

Rule 1B-305 Arraignment.

1. Arraignment defined. Arraignment is the bringing of an accused person before the Court, informing him/her of the charge against him/her and of his/her rights, receiving his/her plea and setting bail. Arraignment shall be held in open Court upon the appearance of an accused in response to a criminal summons or citation or, if the accused was arrested and confined, within forty-eight hours of the arrest, Saturdays, Sundays, and legal holidays excepted.
2. Procedure at arraignment. Arraignment shall be conducted in the following order:
   a. The judge should request the prosecutor to read the charges.
   b. The prosecutor should read the entire complaint, deliver a copy to the defendant and state the maximum authorized penalty, and that he/she has the following rights:
      i. The right to remain silent.
      ii. To be tried by a jury upon request if incarceration upon conviction is a possibility.
      iii. To consult with an attorney at his/her own expense, or with the public defender, and that if he/she desires to consult with an attorney or the public defender the arraignment will be postponed.
   c. The judge should determine that the accused understands the charge against him/her and explain to the defendant.
   d. The judge shall ask the defendant if he/she wishes to obtain counsel and, if the defendant so desires, he/she will be given a reasonable time to obtain counsel. If the defendant shows his/her indigency and counsel is available for appointment under the rules relating to attorneys, counsel may be appointed. If the defendant is allowed time to obtain or consult with counsel, he/she shall not be required to enter a plea until the date set for his/her appearance.
   e. The judge should then ask the defendant whether he/she wishes to plead guilty, nolo contendere, or not guilty.
3. Receipt of plea at arraignment. The defendant shall plead guilty, nolo contendere, or not guilty to the offense charged.
   a. If the defendant refuses to plead, the judge shall enter a plea of not guilty for him/her.
   b. If the defendant pleads not guilty, the judge shall set a trial date and conditions for bail prior to trial.
   c. If the defendant pleads nolo contendere or guilty, the judge shall question the defendant personally to determine that he/she understands the nature of his/her action, the rights that he/she is waiving and that his/her action is voluntary. The judge may refuse to accept a guilty plea. If the guilty plea is accepted, the judge may immediately sentence the defendant or order a sentencing hearing. [TCR 86-79]

Rule 1B-306 Pre-trial diversion. Prior to trial, at the discretion of the judge, a defendant in a Class II or III criminal action may be referred to a community agency for job training, counseling and/or education for a period not to exceed ninety days, if the defendant agrees. During this interval the criminal complaint shall be held in abeyance. At the conclusion of this period, the judge shall review the results of the diversion and, if he/she determines that the diversion was successful, the criminal charge shall be dismissed. Pre-trial diversion is a voluntary alternative, and the accused must be provided the opportunity to consult with counsel prior to a decision to participate. [TCR 86-79]

Rule 1B-307 Commitments. No person shall be detained or jailed under this Code for a period longer than forty-eight hours, Saturdays, Sundays, and legal holidays excepted, unless a commitment bearing the signature of a judge of the Tribal Court has been issued.

1. A temporary commitment may be issued pending investigation of charges or trial.

2. A final commitment may be issued for those persons incarcerated as a result of a judgment and sentence of the Winnebago Tribal Court. [TCR 86-79]

Rule IB-308 Bail.

1. Except as herein provided, all persons arrested for offenses under this Code and incarcerated shall be given the opportunity to make bail and be released pending their trial or appeal.
2. Bail-release prior to trial — personal recognizance. Every person charged with a criminal offense before trial, unless the judge should determine that such a release will not reasonably assure the appearance of such person lawfully required by law, or that release of such person will pose a significant danger to the community, the accused or any other person.
3. Bail — Release Prior to Trial — Alternatives. Where the judge determines that a person charged with a criminal offense should not be released on his/her personal recognizance, the judge may choose from among the following alternatives to assure the appearance of the person at any time lawfully required:
   a. Release after deposit by the accused or a bondsman of bond either in cash or other sufficient collateral in an amount specified by the judge or a bail schedule. The judge, in his/her discretion, may require that the accused post only a portion of the total bond, the full sum to become due if the accused fails to appear as ordered.
   b. Release after execution of a bail agreement by one or more responsible members of the community.
   c. Release to custody of a designated person or organization agreeing to assure the accused's appearance.
   d. Release with reasonable restrictions on the travel, association or place of residence of the accused during the period of release.
   e. Release upon any other condition deemed reasonably necessary to assure the appearance of the accused as required.
   f. No release where the judge finds, from the arguments presented or the past record of the defendant, that no conditions will reasonably assure the appearance of the defendant or that release of the defendant will pose a significant danger to the community, the accused or to any other person.
4. Bail release pending appeal. Every person who has been convicted of a Tribal offense and has appealed the conviction may request bail pursuant to the provisions for bail herein provided.
5. A bail schedule for Class III offenses shall be adopted by the Court and a defendant may obtain release from jail at any time prior to arraignment by posting the amount or amounts of bail specified in the bail schedule for the offense or offenses charged, provided, however, that if the arresting officer or complaining witness shall certify to the jailer, or if the jailer shall certify based on his/her own observation, that the defendant is at the time he/she is brought to the jail unconscious or in an intoxicated or apparently intoxicated condition, or for any reason does not appear to be in a conscious and sober condition, such defendant shall not be allowed to post bail according to the bail schedule for eight hours.
6. At the arraignment or other appropriate time, the judge shall set bail at an amount not to exceed twice the maximum fine payable for the offense charged, which will tend to assure the appearance of the defendant at a trial and at such other times as his/her appearance is necessary. A defendant may, at arraignment, request that any bail posted under the bail schedule be reduced or that he/she be released under terms other than bail as authorized elsewhere in this Title.
7. The required bail may be tendered in the form of cash, collateral or a bail bond executed by two or more reliable persons as sureties subject to the jurisdiction of the Court in the form which the Court shall direct.
8. In the event the defendant fails to appear as required, the Court will forfeit any cash or collateral deposited or order the sureties of the bail bond to pay the designated amount to the Court. The

liability of the sureties may be enforced by order of the Court without the necessity of an independent action or judgment.

9. The Court may order the forfeiture of bail for non-appearance set aside if it appears that justice does not require the enforcement of the forfeiture.

10. The right to be released on bail as provided herein shall not accrue and state laws shall be subject to be released on bail by the jurisdiction under whose authority the arrest was made according to the provisions of the laws under which their arrest was made. A person arrested for violation of federal law shall not be entitled to be released on bail until the prosecution of such charges has been declined by the United States Attorney, plus a reasonable time thereafter, not to exceed thirty-six hours after receipt of notification of such declination, in which charges for violation of this Code, if any, may be filed, provided that upon the arrest of any person solely for violation of federal law, custody of the arrested party shall immediately be given to the appropriate federal authorities. Unless such authorities accept custody of the defendant and make arrangements with the chief of police to physically remove the arrested party from the Tribal jail, or to pay the Tribal jail to hold said party as federal prisoners, the chief of police shall release said party from custody upon twenty-four hours notice to the appropriate United States Attorney and to the Tribal prosecutor if no Tribal charges have been filed as of that time.

11. Security offered as bail shall be returned immediately on an acquittal or finding of not guilty, provided, that bail may be continued until sentencing or a ruling on an appeal, at the discretion of the Court. [TCR 86-79]

Rule 1B-309 Joinder.

1. Joinder of offenses. Two or more offenses may be charged in one complaint so long as they are set out in separate counts and:
   a. They are part of a common scheme or plan; or
   b. They arose out of the same transaction or events.
2. Joinder of defendants. Two or more defendants may be joined in one complaint if they are alleged to have participated in a common act, scheme, or plan to commit one or more offenses. Each defendant need not be charged in each count.

Rule 1B-310 Plea.

1. A defendant may plead guilty, nolo contendere, or not guilty. The Court shall not accept a plea of guilty or nolo contendere without first addressing the defendant personally and determining that the plea is made voluntarily with understanding of the nature of the charge and the consequences of the plea. If the defendant refuses to plead or if the Court refuses to accept a plea of guilty, or nolo contendere, the Court shall enter a plea of not guilty. The Court shall not enter a judgment upon a plea of guilty or nolo contendere unless it is satisfied that there is a factual basis for the plea.
2. The defendant, with the consent of the Court and of the prosecutor, may plead guilty to any lesser offense than that logged which is included in the offenses charged in the complaint or to any lesser degree of the offense charged. [TCR 86-79]

Rule 1B-310.1 Withdrawing guilty plea. A motion to withdraw a plea of guilty may be made before sentence is imposed, defeated, or suspended, except that the Court may allow a guilty plea to be withdrawn to correct a manifest injustice. [TCR 86-79]

Rule 1B-310.2 Plea bargaining. Whenever the defendant pleads, guilty as a result of a plea arrangement with the prosecutor, the full terms of such agreement shall be disclosed to the judge. The judge, in his/her discretion, is not required to honor such agreement. [TCR 86-79]

Rule 1B-311 Pleading and motions before trial: defenses and objections.

1. Pleading in criminal proceedings shall consist of the complaint and the plea of either guilty, nolo contendere, or not guilty. All other pleas and motions shall be made in accordance with these Rules.
2. Motions raising defenses and objections may be made as follows.
   a. Any defenses or objections which are capable of determination other than at trial may be raised before trial by motion.
   b. Defenses and objections based on defects in the institution of the prosecution of the complaint other than that it fails to show jurisdiction in the Court or fails to charge an offense may be raised on motion only before trial or such shall be deemed waived, unless the Court for good cause shown grants relief from such waiver. Lack of jurisdiction or failure to charge an offense may be raised as defenses or noticed by the Court on its own motion at any state of the proceeding.
   c. Such motions shall be made in writing and filed with the Court at least five business days before the day set for trial. Such motions will be argued before trial or the date of trial unless the Court directs otherwise. Decision on such motions shall be made by the judge and not by the jury.
   d. If a motion is decided against a defendant, the trial shall proceed as if no motion were made. If a motion is decided in favor of a defendant, the judge shall alter the proceedings, allow an interlocutory appeal to be taken as provided in the Appellate Rules or enter judgment as is appropriate in light of the decision. [TCR 86-79]

Rule 1B-312 Joinder of offenses.

1. The Court may order two or more defendants tried together if they could have been joined in a single complaint or may order a single defendant tried on more than one complaint at a single trial.
2. If it appears that a defendant or the Winnebago Tribe of Nebraska is prejudiced by a joinder of offenses or other defendants for trial together, the Court may order separate complaints and may order separate trials or provide such other relief as justice requires. In ruling on a motion for severance, the Court may order the Tribe to deliver to the Court for inspection in chambers any statements made by a defendant which the Tribe intends to introduce in evidence at the trial. [TCR 86-79]

Rule 1B-313 Discovery and inspection.

1. The police, or prosecutor, shall, upon request, permit the defendant or his/her attorney to inspect and copy any statements or confessions, or copies thereof, made by the defendant if such are within the possession or control of, or reasonably obtainable by the police or prosecution. The police and prosecution shall also make available copies of reports of physical, mental or scientific tests or examinations relating to or done on the defendant.
2. The defendant or his/her attorney shall reveal by written notice to the Court and the prosecutor at least five working days before trial the name and addresses of any witnesses upon whom the defense intends to rely to provide an alibi or insanity defense for the defendant. Failure to provide such notice will prevent the use of such witnesses by the defense unless it can be shown by the defense that prior notice was impossible or that no prejudice to the prosecution has resulted, in which case the judge may order the trial delayed or make such other orders as tend to assure a just determination of the case. [TCR 86-79]

Rule 1B-314 Subpoena.

1. The defendant and the prosecutor shall have the right to subpoena any witnesses they deem necessary for the presentation of their case, including subpoenas issued in blank. Subpoenas in criminal cases shall be issued, served and returned as in civil cases.
2. A subpoena may be served any place within the territorial jurisdiction of the Tribal Court, and as provided for service in civil cases.
3. Failure, without adequate excuse, to obey a properly served subpoena may be deemed a contempt of Court, and prosecution thereof may proceed upon the order of the Court. No contempt shall be prosecuted unless a return of service of the subpoena has been made on which is endorsed the date, time and place of service and the person performing such service. [TCR 86-79]

Rule 1B-315 Dismissal.

1. The prosecutor may move that a complaint be dismissed and upon the Court's granting such motion, the prosecution of that complaint shall cease, the defendant shall be released and any bail or bail bond released. Such a dismissal shall not be made during trial without the consent of the defendant.
2. If there is an unreasonable and unnecessary delay in bringing a defendant to trial, the Court may, on motion of the defendant or its own motion, dismiss the complaint. No delay of less than six months shall be considered unreasonable under this Section, provided that where the defendant is incarcerated for more than one half of the maximum possible sentence for the offense(s) charged without being brought to trial, the Court may cause the charge to be dismissed under this Section. [TCR 86-79]

TITLE 1B
ARTICLE 4
TRIAL

Rule 1B-401	Trial by jury or by the Court.	Rule 1B-408	Motion for judgment of acquittal; directed verdict.
Rule 1B-402	Trial jurors.	Rule 1B-409	Instructions.
Rule 1B-403	Order of trial.	Rule 1B-410	Verdict.
Rule 1B-404	Trial by judicial panel.	Rule 1B-411	Regulation of conduct in the Courtroom.
Rule 1B-405	Judge disability.	Rule 1B-412	Harmless error and plain error.
Rule 1B-406	Evidence.		
Rule 1B-407	Expert witnesses and interpreters.		

Rule 1B-401 Trial by jury or by the Court.

1. All trials of offenses shall be by the Court without a jury unless the defendant files a request for jury trial at the arraignment or at least ten (10) days prior to the date originally set for trial. Requests for jury trials need not be granted in cases where imprisonment is not a possibility.
2. Juries shall be composed of six members with one alternate if such is deemed divisible by the Court.
3. In a case tried without a jury, the judge shall make a general finding of guilt or innocence and shall upon request of a party, make specific findings which may be embodied in a written decision. [TCR 86-79]

Rule 1B-402 Trial jurors.

1. Jurors shall be drawn from the list of eligible jurors, prepared as provided in the rules promulgated by the Court, by the clerk in advance of trial. Jurors to sit at trial shall be drawn by lot from the group of potential jurors by the judge or clerk at trial. All adult Tribal members who are residents of the reservation are eligible jurors unless such person is incompetent or subject to incarceration or other restraint on his/her liberty due to a judgment and sentence in a criminal case. Any person convicted of a felony within the preceding five years for which he/she did not receive a pardon is not eligible for jury duty.
2. The Court shall permit the defendant or his/her counsel and the prosecutor to examine the jurors and the Court itself may make such an examination.
3. Challenges regarding jury members may be taken as follows:
   a. Each side shall be entitled to three (3) peremptory challenges;
   b. Either side may challenge any juror for cause;
   c. An alternate juror shall be treated as a regular juror for the purpose of challenges.
4. The alternate juror shall be dismissed prior to the jury's retiring to deliberate if he/she has not first been called to replace an original juror who has become for any reason unable or disqualified to serve.
5. Jurors shall otherwise be subject to all rules applicable to juries in civil cases. [TCR 86-79]

Rule 1B-403 Order of trial. The trial of all criminal offenses shall be conducted in the following manner:

1. The Court shall call the case name and number and ask the parties if they are ready to proceed. If the parties are not ready, the Court may continue the case or direct the case to proceed in its direction.

2. If the parties are ready to proceed, the judge should swear all prospective jurors, if the case is to be tried by jury, to decide the case in a fair and impartial manner if selected for jury duty.
3. If the case is to jury, the Court should select a panel of six potential jurors by random and question them to determine if they have any interest in the case.
4. When the Court is satisfied that no juror is directly interested in the case, the prosecution and then the defendant shall be allowed to question the prospective jurors.
5. If it appears that a prospective juror is related to a party in the case or is biased for or against a party, or if the outcome would significantly affect the property, family, or other important interest of the prospective juror, the Court shall dismiss him/her for cause and select another person from the jury panel.
6. Both the prosecutor and the defendant may alternatively request the Court to dismiss any juror by peremptory challenge. Each party shall have three challenges and the Court may not refuse to grant them. No reasons need be given for the challenges and alternate jurors shall be examined and selected as the original panel was selected. The final jury panel should then be sworn.
7. The Court should request the prosecutor to read the criminal complaint and to make his/her opening statement. Prior to reading the complaint, the Court should explain to the jury that the complaint is not evidence, but is being read for the sole purpose of informing the defendant and the jury of the offense charged against the defendant.
8. The prosecutor should then read the complaint and briefly present the facts which he/she intends to prove to show the offense. No argument of the facts or law shall be allowed.
9. The defense may then make an opening statement or may reserve their opening statement until beginning the presentation of the defense evidence.
10. The prosecutor shall then present his/her evidence followed by the defendant's presentation of his/her defense evidence. After the defendant has presented his/her evidence, the prosecutor may present evidence in rebuttal.
11. The prosecutor shall then present his/her closing arguments, the defendant his/her closing argument, and the prosecutor shall be allowed to present a rebuttal.
12. If trial is to a jury, the judge should give them his/her instructions and they shall retire to decide their verdict. If trial is to the judge, he/she shall then make his/her decision or announce the time at which he/she will present his/her decision.
13. If the verdict is not guilty, the defendant should be discharged and bail exonerated.
14 If the verdict is guilty, the judge may impose sentence immediately or may hold a hearing to decide on an appropriate sentence.
15. After sentencing the judge may hold a hearing to determine appeal bond if an appeal is filed. [TCR 86-79]

Rule 1B-404 Trial by judicial panel.

1. In every trial for an offense or offenses punishable by imprisonment for more than four months in which a jury trial is not requested, the judge may, in his/her discretion, upon request of the defense or prosecution, order the matter to be heard by a three judge panel.
2. The chief judge shall assign three judges to sit on the judicial panel for trial. Those judges shall be subject to disqualification only for good cause shown.
3. All orders of the judicial panel, including judgments of conviction or acquittal, shall be by majority vote. The actual vote of each judge shall be held in strict confidence and only the actual decision shall be announced. [TCR 86-79]

Rule 1B-405 Judge disability.

1. If by reason of death, sickness or other disability, the judge before whom a jury trial has commenced is unable to proceed with the trial, any other Tribal judge may, upon certifying that he/she has familiarized him/herself with the record of the trial, proceed with the trial.
2. If by reason of death, sickness or other disability, the judge before whom the defendant has been tried is unable to perform the required duties of a judge after the verdict or finding of guilt, any other Tribal judge may perform those duties unless such judge feels he/she cannot fairly perform those duties in which case a new trial may be granted. A new trial shall not be granted if all that remains to be done is the sentencing of a defendant.

Rule 1B-406 Evidence. The admissibility of evidence and the competence and privileges of witnesses shall be governed by Winnebago Rules of Evidence, except as herein otherwise provided. [TCR 86-79]

Rule 1B-407 Expert witnesses and interpreters.

1. Either party may call expert witnesses of their own selection and each bear the cost of such.
2. The Court may appoint an interpreter of its own selection and each party may provide their own interpreters. An interpreter through whom testimony is received from a defendant or witness or communicated to a defendant or other witness shall be put under oath to faithfully and accurately translate and communicate as required by the Court.
3. The trial judge or clerk may act as interpreter only with the consent of all parties. [TCR 86-79]

Rule 1B-408 Motion for judgment of acquittal; directed verdict.

1. The Court on motion from defendant or on its own motion, shall order the entry of a judgment of acquittal of one or more offenses charged in the complaint after the evidence of either side is closed if the evidence is insufficient as a matter of law to sustain a conviction of such offenses. A motion for acquittal by the defendant does not affect his/her right to present evidence.
2. If a motion for judgment of acquittal is made at the close of all evidence, the Court may reserve decision on the motion, submit the case to the jury and decide the motion any time either before or after the jury returns its verdict or is discharged. [TCR 86-79]

Rule 1B-409 Instructions. At the close of evidence or at such earlier time during the trial as the Court reasonably directs, any party may file written requests that the Court instruct the jury on the law as set forth in the request. At the same time, copies of such requests shall be furnished to adverse parties. The Court shall inform counsel of its proposed action upon the requests prior to the arguments of counsel to the jury, but the Court shall instruct the jury after the arguments are completed. No party may assign as error any portion of the charge or omission therefrom unless he/she objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he/she objects and the grounds of the objection. Opportunity shall be given out of the hearing or if necessary out of the presence of the jury. [TCR 86-79]

Rule 1B-410 Verdict.

1. The verdict of a trial to a judicial panel shall be by majority vote and shall be returned in open Court.
2. The verdict of a jury shall be unanimous. It shall be returned by the jury to the judge in open Court. If the jury is unable to agree, the jury may be discharged and the defendant tried again before a new jury.

3. If there are multiple defendants or charges, the jury may at any time return its verdict as to any defendants or charges to which it has agreed and continue to deliberate on the others.
4. The defendant may be found guilty of a lesser included offense or attempt to commit the crime charged or lesser included offense without having been formally charged with the lesser included offense or attempt.
5. Upon return of the verdict, the jury may be polled at the request of either party. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberation or may be discharged. [TCR 86-79]

Rule 1B-411 Regulation of conduct in the Courtroom. Each judge may regulate the conduct of persons in his/her Courtroom and may forbid the taking of photographs or other visual or audio recording of proceedings occurring therein. [TCR 86-79]

Rule 1B-412 Harmless error and plain error.

1. Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.
2. Errors or defects affecting substantial rights may be recognized and acted upon by the Court even though they were not brought to the attention of the Court by counsel. [TCR 86-79]

TITLE 1B
ARTICLE 5
JUDGMENT
(As revised February 19, 2014)

Rule 1B-50l	Judgment.	Rule 1B-505	Arrest of judgment.
Rule 1B-502	Sentence.	Rule 1B-506	Correction or reduction of sentence.
Rule 1B-503	General sentencing provisions.		
Rule 1B-504	New trial.	Rule 1B-507	Clerical mistakes.

Rule 1B-501 Judgment. A judgment of conviction shall set forth in writing the charge, plea, verdict or findings, and the sentence imposed. If the defendant is found not guilty or is otherwise entitled to be released, judgment shall be entered accordingly. The judgment shall be signed by the judge and entered by the clerk. [TCR 86-79]

Rule 1B-502 Sentence. Sentence shall be set forth as follows:

1. Sentence shall be imposed without unreasonable delay in accordance with the provisions of the Winnebago Code of Criminal Offenses and these Rules. Pending sentence, the Court may commit the defendant to jail or continue or alter the bail. Before imposing sentence, the Court shall allow counsel an opportunity to speak on behalf of the defendant and shall address the defendant personally and ask him/her if he/she wishes to make a statement on his/her own behalf and to present any information in mitigation of punishment.
2. After imposing sentence, the Court shall inform the defendant of his/her right to appeal. [TCR 86-79]

Rule 1B-503 General sentencing provisions. In addition to any sentence otherwise authorized by law the Court may:

1. Order the offender to pay restitution to the victim in money, property or services.
2. Order the offender to pay restitution to the Winnebago Tribe of Nebraska in money, property, or services.
3. Allow such offender to exchange actual work performed for the Tribe in lieu of a fine or imprisonment, at the rate of the prevailing federal minimum wage per hour in effect at the time of sentencing.
4. Allow such offender to maintain their existing regular employment, job training or education, provided that whenever the offender is not employed or being trained or educated and between the hours or periods of employment, training, or education, the offender shall be confined to jail or to a monitored facility.
5. Unless otherwise prohibited, place the offender on probation under such reasonable conditions as the Court may direct for a period not exceeding three times the amount of the maximum sentence allowed.
6. Any person who violates the terms of his/her probation may be required by the Court to serve the sentence originally imposed or such part of it as the Court may determine to be suitable, giving consideration to all the circumstances, provided that such revocation of the probation shall not be ordered without a hearing before the Court at which the Tribe shall have the burden of proving the grounds alleged for revocation and the offender shall have the opportunity to rebut the grounds alleged to justify revocation or to show that if true, they do not warrant such revocation.
7. Unless otherwise prohibited, defer imposing judgment and sentencing for a period not exceeding three times the maximum sentence allowed on condition that if the defendant violates no law and

satisfies such other reasonable conditions, such as restitution, as may be imposed, the plea or guilty verdict will be withdrawn and said charges will be dismissed.

8. In the discretion of the Court, allow the offender to pay a fine in goods or commendations at the fair market value of the goods or commodities to be surrendered, provided, that the Winnebago Tribe shall not reimburse the offender for any excess value of the property surrendered.
9. Order the offender to participate in a rehabilitative program, such as alcohol treatment or mental health counseling.
10. Order the offender to pay Court costs not to exceed one hundred dollars ($100.00).
11. Parole. Any person sentenced by the Court to detention or labor shall be eligible for parole at such time and under such reasonable conditions as set by the Court.
12. For all of the alternatives to incarceration presented in this Rule, the offender shall be supervised by a person duly authorized by the Court to monitor compliance with the sentence imposed. Completion of said sentencing alternatives shall be certified by the Court upon recommendation of the authorized supervisor, which recommendation shall state that the sentence requirements have been satisfied.
13. If an offense specifies that a mandatory minimum penalty is required, the Court may not defer imposing judgment and sentencing, suspend the mandatory minimum penalty, or impose probation in lieu of the mandatory minimum penalty for that offense. The Court may, in its discretion, impose a sentence greater than the mandatory minimum penalty. Only that portion of a sentence greater than the mandatory minimum shall not be subject to the restrictions contained in this subsection. [TCR 86-79, 14-47]

Rule 1B-504 New trial. The Court, on motion of a defendant, may grant a new trial to him/her if required in the interest of justice. If trial was by the Court without a jury, the Court, on motion of a defendant for a new trial, may vacate the judgment, if entered, take additional testimony, and direct the entry of a new judgment. A motion for a new trial based on the ground of newly discovered evidence may be made only within one month after final judgment, but if an appeal is pending, the Court may grant the motion only on the remand of the case. A motion for a new trial based on any other grounds shall be made within seven days after verdict or finding of guilt or within such further time as the Court may fix during the seven day period. [TCR 86-79]

Rule 1B-505 Arrest of judgment. The Court, on motion of a defendant, shall dismiss the action if the complaint does not charge an offense or if the Court was without jurisdiction over the offense charged. The motion in arrest of judgment shall be made within seven days after verdict or finding of guilt or plea of guilty, or within such further time as the Court may fix during the seven day period. [TCR 86-79]

Rule 1B-506 Correction or reduction of sentence. The Court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within thirty days after the sentence is imposed, or within thirty days after receipt by the Court of a mandate issued upon affirmance of the judgment or dismissal of the appeal. The Court may also reduce a sentence upon revocation of probation. [TCR 86-79]

Rule 1B-507 Clerical mistakes. Clerical mistakes in judgments, orders, or other parts of the record and errors in the record arising from oversight or omission may be corrected by the Court at any time and after such notice, if any, as the Court orders. [TCR 86-79]

TITLE 1B
ARTICLE 6
APPEAL

Rule 1B-601 Right of appeal; how taken.
Rule 1B-602 Stay of judgment and relief pending review.

Rule 1B-601 Right of appeal; how taken.

1. The defendant has the right to appeal from the following:
   a. A final judgment of conviction;
   b. From an order made, after judgment, affecting his/her substantial rights;
   c. Such other matters as provided in the Appellate Rules.
2. The Tribe has the right to appeal from the following:
   a. A judgment of dismissal or an order excluding evidence in favor of the defendant prior to trial, or a dismissal based on any procedural irregularity occurring before trial;
   b. An order arresting judgment or acquitting the defendant contrary to the verdict of the jury or before such verdict can be rendered;
   c. An order of the Court directing the jury to find for the defendant;
   d. An order made after judgment affecting the substantial rights of the Tribe;
   e. Such other matters as provided in the Appellate Rules.
3. A notice of appeal must be filed within thirty days of the entry of the final judgment or other appealable order and such must be served on all parties except the party filing the appeal.
4. Such appeals shall be had in accordance with the Winnebago Rules of Appellate Procedure. [TCR 86-79]

Rule 1B-602 Stay of judgment and relief pending review.

1. A sentence of imprisonment may be stayed if an appeal is taken, and the defendant may be given the opportunity to make bail. Any defendant not making bail or otherwise obtaining release pending appeal shall have all time spent in incarceration counted towards his/her sentence in the matter under appeal.
2. A sentence to pay a fine or a fine and costs may be stayed pending appeal upon motion of the defendant, but the Court may require the defendant to pay such money subject to return if the appeal should favor the defendant and negate the requirement for paying such.
3. An order placing the defendant on probation may be stayed in motion of the defendant if an appeal is taken. [TCR 86-79]

TITLE 1B
ARTICLE 7
MISCELLANEOUS PROVISIONS
(As revised February 19, 2014)

Rule 1B-701	Continuance.
Rule 1B-702	Disbursement of money and valuables collected.
Rule 1B-703	Habeas corpus.
Rule 1B-704	Disposition of seized property.
Rule 1B-705	Designation of offenses.
Rule 1B-706	Maximum fines and sentences, payment schedules; credit.
Rule 1B-707	Bail schedule for Class III offenses.
Rule 1B-708	Diversion and probation costs.
Rule 1B-709	Sex offenders.
Rule 1B-710	Additional findings for sex offenses.

Rule 1B-701 Continuance. The Court may grant a request or consent of the prosecution or defense, but also the public interest in prompt disposition of the case. [TCR 86-79]

Rule 1B-702 Disbursement of money and valuables collected. All fines, costs, forfeited bonds, securities or other moneys or valuables collected by the Court shall, unless specifically directed otherwise in this Code, be retained by the Court and used appropriately to enhance the operation of the Court. [TCR 86-79]

Rule 1B-703 Habeas corpus. Any incarcerated person may file with the Court a writ of habeas corpus alleging that said person is being restrained of his/her liberty in violation of his/her rights. Said writ addresses only the issue of unlawful imprisonment. Upon the filing of said writ, a hearing shall be held within seventy-two hours before a Tribal Court judge, other than a judge responsible for the incarceration, for the sole purpose of determining whether or not the imprisonment or detention is unlawful. If the judge determines, based on evidence produced at the hearing that the incarceration is unlawful, said person shall be released from custody immediately. [TCR 86-79]

Rule 1B-704 Disposition of seized property.

1. Property seized under a search warrant or validly seized without a warrant shall be safely kept by the officer seizing the same unless otherwise directed by the judge or magistrate, and shall be so kept so long as necessary for the purpose of being produced as evidence at any trial. Property seized may not be taken from the officer having it in custody by replevin or other writ so long as it is or may be required as evidence in any trial, nor may it be so taken in any event where a complaint has been filed in connection with which the property was or may be used as evidence, and the Court shall have exclusive jurisdiction for disposition of the property or funds and to determine rights therein, including questions respecting the title, possession, control and disposition thereof.
2. Where seized property is no longer required as evidence in the prosecution of any complaint or information, the Court which has jurisdiction of such property may transfer the same to the jurisdiction of any other Court, where it is shown to the satisfaction of the Court that such property is required as evidence in any prosecution in such other Court.
3. Unless other disposition is specifically provided by law, when property seized or held is no longer required as evidence, it shall be disposed of on order of the Court on such showing as the Court may deem adequate, as follows:
    a. Property stolen, embezzled, obtained by false pretenses, or otherwise obtained unlawfully from the rightful owner thereof shall be restored to the owner;

b. Money shall be restored to the owner unless it was used in unlawful gambling activities or in the purchase or sale of contraband, in which case it shall be forfeited to the Court.
c. Property which is unclaimed or the ownership of which is unknown shall be sold at a public auction held by the officer having custody thereof and the net proceeds disposed of as provided in Rule 43 of this Title, as shall any money which is unclaimed or the ownership of which is unknown;
d. Articles of contraband shall be destroyed, except that any such articles which may be capable of lawful use may in the discretion of the Court be sold and the proceeds disposed of as provided in Rule 43 of this Title;
e. Firearms, ammunition, explosives, bombs, and like devices which have been used in the commission of crime shall be disposed of in the same manner as contraband; and
f. Unless otherwise provided by law, all other property shall be disposed of in such manner as the Court in its sound discretion shall direct. [TCR 86-79, 93-85]

Rule 1B-705 Designation of offenses.

1. Offenses are designated as Class I offenses, Class II offenses and Class III offenses.
2. An offense for which no penalty or sentence is specifically designated as a certain class of offense shall be treated for purposes of bail, sentencing and punishment as a Class III offense. [TCR 86-79]

Rule 1B-706 Maximum fines and sentences; payment schedules; credit.

1. There shall be five classes of offenses in the Code:
   a. "Class One" offense shall be the most serious of offenses for which the maximum penalty shall be one year imprisonment and a five thousand ($5,000) fine. Unless otherwise provided, there is no minimum penalty for a Class One offense; and
   b. "Class Two" offense shall be the second class of offenses for acts which are criminal on this reservation and of an intermediate seriousness. The maximum penalty for a Class Two offense shall be six months imprisonment and a one thousand dollar ($1,000) fine. Unless otherwise provided, there is no minimum penalty for a Class Two offense; and
   c. "Class Three" offense shall be the least class of offenses for acts which are criminal on this reservation. The maximum penalty for a Class Three offense shall be three months imprisonment and a five hundred dollar ($500) fine. Unless otherwise provided, there is no minimum penalty for a Class Three offense; and
   d. An infraction is an act which is not treated as criminal but is a violation of the law. The maximum penalty for an infraction is a two hundred dollar ($200) fine. Unless otherwise provided, there is no minimum fine for an infraction.
   e. All "Driving While Intoxicated (DWI)" and "Implied Consent Refusal" offenses shall be considered a "Class W" offense. The minimum and maximum penalties shall be as follows:

	Minimum	Maximum
First conviction	Seven days imprisonment and a two hundred dollar ($200) fine	Sixty days imprisonment and a five hundred dollar ($500) fine
Second conviction	Thirty days imprisonment and a four hundred dollar ($400) fine	Ninety days imprisonment and a five hundred dollar ($500) fine
Third and subsequent Convictions	Ninety days imprisonment and a six hundred dollar ($600) fine	One year imprisonment and a six hundred dollar ($600) fine

2. The fines listed above may be imposed in addition to any assessment of costs or other civil penalties and in addition to any amounts ordered paid as restitution.
3. If, solely because of indigency, a convicted offender is unable to pay forthwith a money fine or costs assessed under other provisions of this Code, the Court shall allow him/her a reasonable time to pay the entire sum or allow him/her to make reasonable installment payments to the clerk of the Court at specified intervals until the entire sum is paid. If the offender defaults on such payments, the Court may find him/her in contempt of Court and imprison him/her accordingly.
4. Credit against a term of imprisonment imposed following an adjudication of guilty shall be given to a defendant for all time spent in custody as a result of the criminal charge for which the sentence is imposed or as a result of the conduct on which such charge is based. Such credit shall apply to time spent in custody prior to trial, during trial, pending sentence, and pending resolution of an appeal.
5. In case of re-prosecution for any reason of the same offense or an offense based on the same conduct for which a defendant has been imprisoned, credit shall be given for all time spent in custody under prior prosecution as provided in subsection (4) above.
6. Credit as provided in this Section should be considered and computed by the Court at the time of sentencing.
7. Sentencing that includes imprisonment pursuant to a mandatory minimum penalty may include work release and/or house arrest provisions. [TCR 86-79, 89-87, 95-07, 03-194, 14-47]

Rule 1B-707 Bail schedule for Class III offenses. Bail for all Class III offenses shall be set by the judge, and shall be no less than twenty-five dollars ($25.00), nor more than fifty dollars ($50.00). [TCR 86-79]

Rule 1B-708 Diversion and probation costs.

1. A person placed on probation or diversion and subject to supervision by the Court shall be required to pay a $50.00 enrollment fee to the Winnebago Tribal Court to offset the costs of supervision. This fee applies to both juvenile and adult cases.
2. The fees collected pursuant to this Section shall be used for administrative and program services.
3. The Tribal Court may adopt rules for the administration of this Section.
4. This provision shall be effective January 1, 2006. [TCR 06-27]

Rule 1B-709 Sex offenders. In addition to Rule 1B-706, an offense that is a “sex offense” pursuant to the Winnebago Tribe of Nebraska Sex Offender Registration Act, Title 7, Article 16, shall be punishable by the following:

1. A Court order to register as a sex offender with the Winnebago Tribe of Nebraska Chief of Police;
2. Residential restrictions against living within 1,000 feet of any school, child care facility, youth program, or playground;
3. Active participation in and successful completion of a sex offender treatment program with qualified practitioners specifically trained to treat sex offenders;
4. A prohibition on contact with the victim, directly or indirectly, including through a third person, unless approved by the victim, the offender’s therapist, and the Tribal Court; and
5. If the victim was under the age of 18, a prohibition against contact with children under the age of eighteen (18) without review and approval by the Tribal Court; provided that the sex offender has successfully completely a sex offender treatment program. [TCR 11-160]

Rule 1B-710 Additional findings for sex offenses.

1. At sentencing for any offense that is sex offense pursuant to the Winnebago Sex Offender Registration Act (Title 7, Article 16), the Tribe and the defendant shall present any additional evidence necessary for the Court to make a determination as to which sex offense registry Tier the offender must register under pursuant to the federal Sex Offender Registration and Notification Act (SORNA) (Title I of Public Law 109-248) and Title 7, Article 16 of the Tribal Code.
2. Upon consideration of such evidence, the Court will determine what tier of sex offender the defendant is, pursuant to the Winnebago Sex offender Registration Act, and shall inform defendant of defendant's registration obligation pursuant to the Winnebago Sex offender Registration Act and SORNA. [TCR 11-160]

TITLE 1C
TABLE OF REVISIONS

The following table is included in this title as a guide for determining whether each article properly reflects the current version. This table will be updated with the revision of each article.

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Article	**Section**	**Revised Date**

TITLE 1C
ARTICLE 1
TRIBAL CHILD SUPPORT GUIDELINES

Rule 1C-101 Guidelines Adopted.
Rule 1C-102 Table.
Rule 1C-103 Purpose.
Rule 1C-104 Temporary and Permanent Support.
Rule 1C-105 Rebuttable Presumption.
Rule 1C-106 Total Monthly Income.
Rule 1C-107 Deductions.
Rule 1C-108 Monthly Support.
Rule 1C-109 Parent's Monthly Share.
Rule 1C-110 More Than One Child.
Rule 1C-111 Minimum Support.
Rule 1C-112 Non-Cash Support.
Rule 1C-113 Visitation or Parenting Time Adjustments.
Rule 1C-114 Split Custody.
Rule 1C-115 Joint Physical Custody.
Rule 1C-116 Alimony.
Rule 1C-117 Child-Care Expenses.
Rule 1C-118 Child(ren)'s Health Insurance and Nonreimbursed Health Care Expenses.
Rule 1C-119 Modification.
Rule 1C-120 Basic Subsistence Limitation.
Rule 1C-121 Limitation on Increase.
Rule 1C-122 Limitation on Decrease.
Rule 1C-123 Maintenance and Review of Guidelines.

TITLE 1C
ARTICLE 1
TRIBAL CHILD SUPPORT GUIDELINES

Rule 1C-101	Guidelines Adopted.
Rule 1C-102	Table.
Rule 1C-103	Purpose.
Rule 1C-104	Temporary and Permanent Support.
Rule 1C-105	Rebuttable Presumption.
Rule 1C-106	Total Monthly Income.
Rule 1C-107	Deductions.
Rule 1C-108	Monthly Support.
Rule 1C-109	Parent's Monthly Share.
Rule 1C-110	More Than One Child.
Rule 1C-111	Minimum Support.
Rule 1C-112	Non-Cash Support.
Rule 1C-113	Visitation or Parenting Time Adjustments.
Rule 1C-114	Split Custody.
Rule 1C-115	Joint Physical Custody.
Rule 1C-116	Alimony.
Rule 1C-117	Child-Care Expenses.
Rule 1C-118	Child(ren)'s Health Insurance and Nonreimbursed Health Care Expenses.
Rule 1C-119	Modification.
Rule 1C-120	Basic Subsistence Limitation.
Rule 1C-121	Limitation on Increase.
Rule 1C-122	Limitation on Decrease.
Rule 1C-123	Maintenance and Review of Guidelines.

Rule 1C-101 Guidelines Adopted. The Winnebago Tribal Court has undertaken to prescribe uniform child support guidelines and criteria pursuant to the federal Final Rule for Tribal Child Support Enforcement IV-D Programs, 45 CFR 309 (March 30, 2004) and Winnebago Tribe of Nebraska Family Relations Code, Title 12, Article 5. The child support guidelines in this Article are hereby adopted, effective thirty (30) days from the date of approval by the Winnebago Tribal Council. The guidelines shall apply to civil cases pending on or after the effective date. Proceedings to establish child support obligations are civil in nature and where not governed by the procedures set forth under this Article, shall be conducted according to the Winnebago Rules of Civil Procedure. [TCR 08-79]

Rule 1C-102 Table. The table contained in this chapter is established as guidelines for use by the Winnebago Tribal Court in determining the amount of child support. The table is applicable to modification of child support orders as provided in Rule 1C-119, below. [TCR 08-79]

Rule 1C-103 Purpose. The main principle behind these Tribal child support guidelines is to provide for the best interests of the children by recognizing the equal duty of both parents to contribute to the support of their children in proportion to their respective net incomes. [TCR 08-79]

Rule 1C-104 Temporary and Permanent Support. The Tribal child support guidelines are intended to be used for both temporary and permanent support determinations. [TCR 08-79]

Rule 1C-105 Rebuttable Presumption. The Tribal child support guidelines shall be applied as a rebuttable presumption. All orders for child support obligations shall be established in accordance with the provisions of the Tribal guidelines unless the Tribal Court finds that one or both parties have produced sufficient evidence to rebut the presumption that the Tribal guidelines should be applied. All stipulated agreements for child support must be reviewed against the Tribal guidelines and if a deviation exists and is approved by the Tribal Court, specific written findings giving the reason for the deviation must be made. Written findings must state the amount of support that would have been required under the guidelines and include a justification of why the order varies from the guidelines. Deviations must take into consideration the best interests of the child. In the event of a deviation, the reason for the deviation shall be contained in the findings portion of the decree or order, or worksheet 5 should be completed by

the Tribal Court and filed in the Court file. Deviations from the guidelines are permissible under the following circumstances:

1. When there are extraordinary medical costs of either parent or child;
2. When special needs of a disabled child exist;
3. If total net income exceeds $15,000 monthly, child support for amounts in excess of $15,000 monthly may be more but shall not be less than the amount which would be computed using the $15,000 monthly income unless other permissible deviations exist. To assist the Court and not as a rebuttable presumption, the Court may use the amount at $15,000 plus: 10 percent of net income above $15,000 for one, two, and three children; 12 percent of net income above $15,000 for four children; 13 percent of net income for five children; and 14 percent of net income for six children;
4. For juveniles placed in foster care; or
5. Whenever the application of the guidelines in an individual case would be unjust or inappropriate.

All orders for child support, including modifications, must include a basic income and support calculation worksheet 1, and if used, worksheet 2 or 3. [TCR 08-79]

Rule 1C-106 Total Monthly Income. "Total monthly income" is income of both parties derived from *all sources*, except all means-tested public assistance benefits, including Tribal or State TANF and any earned income tax credit and payments received for children of prior marriages. This would include income that could be acquired by the parties through reasonable efforts. For instance, the Court may consider as income the retained earnings in a closely-held corporation of which a party is a shareholder if the earnings appear excessive or inappropriate. All income should be annualized and divided by 12. For example, a party who receives a salary of $200 gross per week would have an annualized gross income of $10,400 ($200 times 52) and a monthly income of $866.67 (10,400 divided by 12). If the person is paid $200 every 2 weeks, his or her annualized gross income would be $5,200 ($200 times 26) and monthly income would be $433.33 (5,200 divided by 12).

Examples of income may include any form of periodic payment to an individual, including, but not limited to, salaries, wages, commissions, self-employment income, workers' compensation, unemployment benefits, annuity payments, military and naval retirement, pension and disability payments, spousal maintenance received under a previous order or the current proceeding, Social Security or Veterans benefits provided for a dependent child, gaming winnings, Tribal per capita payments, and any form of federal or Tribal trust benefits derived from a person's status as an enrolled member of any federally-recognized tribe, including but not limited to general assistance payments, oil or other mineral royalties, agricultural leases, and water leases.

It is the responsibility of the person with seasonal employment to budget income so that payments are made monthly throughout the year.

The Tribal Court may consider overtime wages in determining child support if the overtime is a regular part of the employment and the employee can actually expect to regularly earn a certain amount of income from working overtime. In determining whether working overtime is a regular part of employment, the Court may consider such factors as the work history of the employee for the employer, the degree of control the employee has over work conditions, and the nature of the employer's business or industry.

Depreciation calculated on the cost of ordinary and necessary assets may be allowed as a deduction from income of the business or farm to arrive at an annualized total monthly income. After an asset is shown to be ordinary and necessary, depreciation, if allowed by the Tribal Court, shall be calculated by using the

"straight-line" method, which allocates cost of an asset equally over its useful duration or life. An asset's life should be determined with reference to the Class-lives and Recovery Periods Table created pursuant to 26 CFR § 1.167(a)-11. A party claiming depreciation shall have the burden of establishing entitlement to its allowance as a deduction.

Copies of at least two (2) years' tax returns, financial statements, and current wage stubs should be furnished to the Tribal Court and the other party to the action at least three (3) days before any hearing requesting relief. Any party claiming an allowance of depreciation as a deduction from income shall furnish to the Court and the other party copies of a minimum of five (5) years' tax returns at least 14 days before any hearing pertaining to the allowance of the deduction.

If applicable, earning capacity may be considered in lieu of a parent's actual, present income and may include factors such as work history, education, occupational skills, and job opportunities. Earning capacity is not limited to wage-earning capacity, but includes moneys available from all sources. [TCR 08-79]

Rule 1C-107 Deductions. The following deductions should be annualized to arrive at monthly net income:

1. *Taxes*. Standard deductions applicable to the number of exemptions provided by law will be used to establish the amount of federal and state income taxes.
2. *FICA*. Social Security deductions, or any other mandatory contributions in lieu of Social Security deductions including any self-employment tax paid.
3. *Retirement*. Individual contributions, in a minimum amount required by a mandatory retirement plan. Where no mandatory retirement plan exists, a deduction shall be allowed for a continuation of actual voluntary retirement contributions not to exceed 4 percent of the gross income from employment or 4 percent from the net income from self-employment.
4. *Child Support*. Child support previously ordered for other children.
5. *Other Children*. Subject to Rule 1C-122, credit may be given for biological or adopted children for whom the obligor provides regular support. [TCR 08-79]

Rule 1C-108 Monthly Support. The combined monthly net income of both parties from line 4 of worksheet 1 is compared to table 1. For example, if the combined monthly net income was $1,500 and there were three children, we would find $530 as the child support from table 1 (read across the table from $1,500 to the "Three Children" column to find $530). [TCR 08-79]

Rule 1C-109 Parent's Monthly Share. This is the child support amount from line 7, worksheet 1 (or line 9 if applicable), multiplied by the percentage contribution of each parent from line 6, worksheet 1. In our example, if F had a monthly net income of $1,000 and M had a monthly income of $500, each parent's monthly share would be $355.10 for F (.67 times $530) and $174.90 for M (.33 times $530). F would be required to pay M $355.10 per month in the event M was awarded custody of the children. [TCR 08-79]

Rule 1C-110 More Than One Child. If there is more than one child, the Court's order should specify the amount of child support due for the children, with the amount recalculated and reduced as the obligation to support terminates for each child. The amount due for each possibility should be calculated separately from table 1. In our example, if M was awarded custody of the children, F would be required to pay $355.10 (.67 times $530) when there are three children, $328.30 (.67 times $490) when there are two children, and $258.62 (.67 times $386) when there is one child. See worksheet 4. The order should direct that child support continue only until each child reaches majority under Winnebago law, becomes

emancipated, becomes self-supporting, marries, or dies, or until further order of the Tribal Court. [TCR 08-79]

Rule 1C-111 Minimum Support. It is recommended that even in very low income cases, a minimum support of $50, or 10 percent of the obligor's net income, whichever is greater, per month be set. This will help to maintain information on such obligor, such as his or her address, employment, etc., and, hopefully, encourage such person to understand the necessity, duty, and importance of supporting his or her children. [TCR 08-79]

Rule 1C-112 Non-Cash Support. A non-cash support payment may satisfy a set child support obligation only where:

1. The obligor and obligee agree to the non-cash support as a form of payment and the Court approves of the non-cash support in the written order;
2. The Court states the specific dollar amount of the child support obligation in the written order;
3. The Court describes in the written order the type(s) of non-cash support that will be permitted to satisfy the underlying specific dollar amount of the child support order and that only 50% of the underlying child support obligation may be met by non-cash support; and
4. The Court provides in the written order that the non-cash support will not be permitted to satisfy child support obligations that have been assigned to any tribal or state public agency.

The making of direct payments to or for the benefit of the child, the giving of gifts, the purchasing of food, clothing and the like, or the payment of bills shall ***not*** satisfy the aforesaid child support obligation unless such payments are approved by the Court as Non-Cash Support under this Rule. [TCR 08-79]

Rule 1C-113 Visitation or Parenting Time Adjustments. Visitation or parenting time adjustments or direct cost sharing should be specified in the support order. If child support is not calculated under Rule 1C-115, an adjustment in child support may be made at the discretion of the Tribal Court when visitation or parenting time substantially exceeds alternating weekends and holidays and 28 days or more in any 90-day period. During visitation or parenting time periods of 28 days or more in any 90-day period, support payments may be reduced by up to 80 percent. The amount of any reduction for extended parenting time shall be specified in the Court's order and shall be presumed to apply to the months designated in the order. Any documented substantial and reasonable long-distance transportation costs directly associated with visitation or parenting time may be considered by the Court and, if appropriate, allowed as a deviation from the guidelines. [TCR 08-79]

Rule 1C-114 Split Custody. Split custody is defined as each parent having physical custody of one or more of the children. Worksheet 2 shows how to do this calculation. [TCR 08-79]

Rule 1C-115 Joint Physical Custody. When a specific provision for joint physical custody is ordered and each party's parenting time exceeds 142 days per year, it is a rebuttable presumption that support shall be calculated using worksheet 3. When a specific provision for joint physical custody is ordered and one party's parenting time is 109 to 142 days per year, the use of worksheet 3 to calculate support is at the discretion of the Court. If child support is determined under this paragraph, all reasonable and necessary direct expenditures made solely for the child(ren), such as clothing and extracurricular activities, may be allocated between the parents, as determined by the Court, but shall not exceed the proportion of the obligor's parental contributions (worksheet 1, line 6). For purposes of these guidelines, a "day" shall be generally defined as including an overnight period. [TCR 08-79]

Rule 1C-116 Alimony. These guidelines intend that spousal support be determined from income available to the parties after child support has been established. [TCR 08-79]

Rule 1C-117 Child-Care Expenses. Child-care expenses are not specifically computed into the guidelines amount. If the Tribal Court chooses to allocate child-care expenses, the Court shall consider such expenses independently of any amount computed by use of these guidelines. Care expenses for the child for whom the support is being set, which are due to employment of either parent or to allow the parent to obtain training or education necessary to obtain a job or enhance earning potential, shall be allocated to the obligor parent as determined by the Court, but shall not exceed the proportion of the obligor's parental contribution (worksheet 1, line 6) and shall be added to the basic support obligation computed under these guidelines. The value of the federal income tax credit for child care shall be subtracted from actual costs to arrive at a figure for net child-care expenses. The Court may impute the value of the federal child-care tax credit using worksheet 6 if the parent incurring the child-care expense has monthly gross income above $2,100 for one child; $2,500 for two children; $2,600 for three children; $2,700 for four children; $2,800 for five children; and $2,900 for six children. The value shall be imputed at 25 percent of the child-care expense, not to exceed $62.50 per month for one child and $125 per month for two or more children. [TCR 08-79]

Rule 1C-118 Child(ren)'s Health Insurance and Nonreimbursed Health Care Expenses. The child support order shall address how or whether the parents will provide for the child(ren)'s health care needs through health insurance as well as the nonreimbursed reasonable and necessary child(ren)'s health care costs that are not included in table 1 that are provided for in subparagraph 2 of this rule.

1. *Health Insurance*. The increased cost to the parent for health insurance for the child(ren) of the parent shall be prorated between the parents. When worksheet 1 is used, it shall be added to the monthly support from line 7, then prorated between the parents to arrive at each party's share of monthly support on line 10 of worksheet 1. The parent requesting an adjustment for health insurance premiums must submit proof of the cost for health insurance coverage of the child(ren). The parent paying the premium receives a credit against his or her share of the monthly support.
2. *Health Care*. Children's health care expenses are specifically included in the guidelines amount of up to $480 per child per year. The Tribal Court ***may*** order that either parent provide health insurance to meet children's health care needs where appropriate. All nonreimbursed reasonable and necessary children's health care costs in excess of $480 per child per year shall be allocated to the obligor parent as determined by the Court, but shall not exceed the proportion of the obligor's parental contribution (worksheet 1, line 6). [TCR 08-79]

Rule 1C-119 Modification. Application of the child support guidelines which would result in a variation by 10 percent or more, but not less than $25, upward or downward, of the current child support obligation, child care obligation, or health care obligation, due to financial circumstances which have lasted 3 months and can reasonably be expected to last for an additional 6 months or for a period of time determined by the Tribal Court, establishes a rebuttable presumption of a material change of circumstances. [TCR 08-79]

Rule 1C-120 Basic Subsistence Limitation. A parent's support, child care, and health care obligation shall not reduce his or her net income below the minimum of $851 net monthly for one person, or the poverty guidelines updated annually in the Federal Register by the U.S. Department of Health and Human Services under authority of 42 U.S.C. § 9902(2), except minimum support may be ordered as defined in Rule 1C-111 above. [TCR 08-79]

Rule 1C-121 Limitation on Increase. Under no circumstances shall there be an increase in support due from the obligor solely because of an increase in the income of the obligee. [TCR 08-79]

Rule 1C-122 Limitation on Decrease. An obligor shall not be allowed a reduction in an existing support order solely because of the birth, adoption, or acknowledgment of subsequent children of the obligor; however, a duty to provide regular support for subsequent children may be raised as a defense to an action for an upward modification of such existing support order. [TCR 08-79]

Rule 1C-123 Maintenance and Review of Guidelines. The Tribal Court shall maintain uniform child support guidelines and criteria and review the guidelines and criteria at least once every four years, pursuant to the Final Rule for Tribal Child Support Enforcement IV-D Programs, 45 CFR § 309.105 (March 30, 2004). The Winnebago Tribe of Nebraska Child Support Enforcement Program Director is responsible for notifying the Tribal Court Judges and Court Administrator when a review and potential revision of the guidelines are necessary. The Tribal Court Judges and Court Administrator shall convene a Guidelines Advisory Committee of five members, including one member appointed by the Winnebago Tribe of Nebraska Attorney General's office, two employees of the Winnebago Tribe of Nebraska Child Support Enforcement Program appointed by the Child Support Director, one Tribal Court Judge, and the Tribal Court Administrator. The Tribal Court Judge(s) will review reports submitted to the Tribal Court by the Guidelines Advisory Committee. The initial review shall be performed within three years of July 1, 2008, and subsequently within the four-year period of the most recent review. [TCR 08-79]

TITLE 1D
TABLE OF REVISIONS

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Article	**Section**	**Revised Date**
1	1D-101 – 1D-111	7/5/16
2	1D-201 – 1D-212	7/5/16
3	1D-301 – 1D-310	7/5/16

TITLE 1D
BANISHMENT AND EXCLUSION CODE

Adopted June 16, 2010
Redesignated June 21, 2010
Repealed July 5, 2016
[TCR 10-110; 10-112; 16-106]

TITLE 2
CIVIL PROCEDURE
(As redesignated February 24, 1994)

SUMMARY OF CONTENTS

SECTION		ARTICLE-PAGE
1. TABLE OF REVISIONS		ii
2. TABLE OF CONTENTS		iii
3. ARTICLE 1: GENERAL PROVISIONS		1-1
4. ARTICLE 2: COMMENCEMENT OF ACTION PLEADINGS, MOTIONS AND ORDERS		2-1
5. ARTICLE 3: PROCESS, SUMMONS, FILING OF PLEADINGS AND OTHER PAPERS		3-1
6. ARTICLE 4: PARTIES		4-1
7. ARTICLE 5: DEPOSITIONS AND DISCOVERY		5-1
8. ARTICLE 6: WITNESSES		6-1
Subpart A	Testimony Under Privilege Against Prosecution	6-4
9. ARTICLE 7: JURORS		7-1
10. ARTICLE 8: TRIAL		8-1
Subpart A	Impaneling Jury	8-3
Subpart B	Trial Procedure	8-5
Subpart C	Verdict	8-11
Subpart D	Miscellaneous Trial Provisions	8-14
11. ARTICLE 9: PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS		9-3
Subpart A	Injunctions	9-1
Subpart B	Replevin	9-7
Subpart C	Attachment	9-11
Subpart D	Garnishment	9-14
Subpart E	Provisions Relating to Attachment and Garnishment (Reserved)	9-17
Subpart F	Receivers	9-18
Subpart G	Eminent Domain	9-20
12. ARTICLE 10: JUDGMENT		10-1
Subpart A	Foreign Judgments	10-10
Subpart B	Execution	10-12

Subpart C Contribution 10-19
Subpart D Costs 10-21

13. ARTICLE 11: LIMITATION OF ACTIONS 11-1

14. ARTICLE 12: FAMILY RELATIONS 12-1
Subpart A Statutory Divorce 12-3

15. ARTICLE 13: FORCIBLE ENTRY AND DETAINER 13-1

16. ARTICLE 14: HABEAS CORPUS 14-1

17. ARTICLE 15: MANDAMUS 15-1

18. ARTICLE 16: QUO WARRANTO 16-1

19. ARTICLE 17: SMALL CLAIMS PROCEDURE 17-1

TITLE 2
TABLE OF REVISIONS

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Article	**Section**	**Revised Date**

TITLE 2
CIVIL PROCEDURE
(As redesignated February 24, 1994)

ARTICLE 1
GENERAL PROVISIONS

2-101 Scope of this Act.
2-102 Jurisdiction in civil actions.
2-103 Title of this Act.
2-104 Force of the Tribal common law
2-105 Definitions.
2-106 No effect upon sovereign immunity.
2-107 Declaratory judgment.
2-108 Court costs not charged to Tribe.
2-109 Effect of previous Court decisions.
2-110 C.F.R. not applicable.
2-111 Laws applicable to civil action.
2-112 Court action when no procedure provided.

TITLE 2
ARTICLE 2
COMMENCEMENT OF ACTION; PLEADINGS, MOTIONS AND ORDERS

2-201 Commencement of action.
2-202 One form of action.
2-203 “Claim” defined.
2-204 Notice of pendency of action.
2-205 Notice of pendency contingent upon service.
2-206 Special notice for actions pending in other Courts.
2-207 Pleadings allowed; form of motions.
2-208 General rules of pleading.
2-209 Pleading special matters.
2-210 Form of pleadings, motions, and briefs.
2-211 Signing of pleadings.
2-212 Defenses and objections—when and how presented--by pleadings or motions--motion for judgment on the pleadings.
2-213 Final dismissal on failure to amend.
2-214 Counterclaim and cross-claim.
2-215 Counterclaim: effect of the statute of limitations.
2-216 Counterclaims against assigned claims.
2-217 Third-party practice.
2-218 Amended and supplemental pleadings.
2-219 Pre-trial procedure; formulating issues.
2-220 Lost pleadings.
2-221 Tenders of money or property.
2-222 Dismissal of actions.

TITLE 2
ARTICLE 3
PROCESS, SUMMONS, FILING OF PLEADINGS AND OTHER PAPERS

2-301 Issuance of summons.
2-302 Form of summons.
2-303 Who may serve process personally.
2-304 Service of process by mail.
2-305 Service by publication.
2-306 Publication service upon parties and the unknown successors of named parties.
2-307 Publication notice for recovery of money.
2-308 Publication notice in quiet title actions.
2-309 Completion of publication service.
2-310 Entry of default on party served by publication.
2-311 Vacating default judgments where service is by publication.
2-312 Certain technical errors not grounds for vacating judgment.
2-313 Meaning of “successors” for publication purposes.
2-314 Minimum contacts required for effective long arm service.
2-315 Consent is effective substitute for service.
2-316 Service pursuant to Court order.
2-317 Summons and complaint; person to be served.
2-317.1 Effect of service of some of several defendants.
2-318 Service upon party not inhabitant of or found within the territorial limits of the reservation.
2-319 Territorial limits of effective service.
2-320 Return of service of process.
2-321 Alternative provisions for service in a foreign country.
2-322 Subpoena.
2-330 Summons; time limit for service.
2-331 Service and filing of pleadings and other papers.
2-340 Time.
2-341 General cases in which extraterritorial service authorized.
2-342 Legal newspaper.

TITLE 2
ARTICLE 4
PARTIES

2-401 Parties plaintiff and defendant: capacity.
2-402 Joinder of claims, remedies, and actions.
2-403 Joinder of persons needed for just adjudication.
2-404 Permissive joinder of parties.
2-405 Misjoinder and non-joinder of parties.
2-406 Interpleader.
2-407 Class actions.
2-408 Derivative actions by shareholders and members.
2-409 Intervention.
2-410 Substitution of parties.

TITLE 2
ARTICLE 5
DEPOSITIONS AND DISCOVERY

2-501 General provisions governing discovery.
2-502 Depositions before action or pending appeal.
2-503 Persons before whom depositions may be taken.
2-504 Stipulations regarding discovery procedure.
2-505 Depositions upon oral examination.
2-506 Depositions upon written questions.
2-507 Use of depositions in Court proceedings.
2-508 Interrogatories to parties.
2-509 Production of documents and things and entry upon land for inspection and other purposes.
2-510 Physical and mental examination of persons.
2-511 Requests for admission.
2-512 Failure to make or cooperate in discovery: sanctions.

TITLE 2
ARTICLE 6
WITNESSES

2-601 Issue and service of subpoena for witnesses.
2-602 Subpoenas--contents.
2-603 Subpoena for deposition.
2-604 Subpoena for agency hearings.
2-605 Witness may demand fees--exception.
2-606 Disobedience of subpoena.
2-607 Attachment of witness.
2-608 Punishment for contempt.
2-609 Discharge when imprisonment illegal.
2-610 Requisites of attachment--order of commitment.
2-611 Examination of prisoner.
2-612 Prisoner’s custody during examination.
2-613 Witness privileged.
2-614 Witness may demand fees each day--exception.
2-615 Special provisions for Tribal agencies.

TITLE 2
ARTICLE 6, WITNESSES
SUBPART A
TESTIMONY UNDER PRIVILEGE AGAINST PROSECUTION

2-650 Privilege for committee testimony.
2-651 Procedure for claiming privilege.
2-652 Oaths.
2-653 Penalties.
2-654 Disgrace as ground for refusal to testify.
2-655 Prosecution.
2-656 Fees and mileage.

TITLE 2
ARTICLE 7
JURORS

2-701 Meeting for selection of jurors.
2-702 Court clerk's jury selection roll.
2-703 Preparation of jury wheel.
2-704 Drawing general jury panel.
2-705 Use of a jury panel.
2-706 Certifying and sealing lists.
2-707 Oath and delivery of envelopes.
2-708 Sealing and retaining juror name cards.
2-709 Refilling wheel.
2-710 Summoning jurors.
2-711 On-call system jurors.
2-712 Drawing trial jurors from panel.
2-713 Qualifications and exemptions of jurors.
2-714 Substantial compliance.
2-715 Oath to jury.
2-721 Discharge of employee for jury service--penalty.
2-722 Civil liability--damages.

TITLE 2
ARTICLE 8
TRIAL

2-801 Trial defined.
2-802 Trial of issues.
2-803 Jury trial of right.
2-804 Trial by jury or by the Court.
2-805 Assignment of cases for trial.
2-806 Consolidation; separate trials.

TITLE 2
ARTICLE 8, TRIAL
SUBPART A
IMPANELING JURY

2-821 Summoning jury.
2-822 Causes for challenging jurors.
2-823 Examination of jurors.
2-824 Alternate jurors.
2-825 Order of challenges.
2-826 Challenges to jurors – filling vacancies.
2-827 Alternate method of selecting jury.
2-828 Oath of jury.
2-829 Juries of less than six-majority verdict.

TITLE 2
ARTICLE 8, TRIAL
SUBPART B
TRIAL PROCEDURES

2-831 Order of trial.
2-832 Taking of testimony.
2-833 Exceptions unnecessary.
2-834 Instructions to jury objection.
2-835 Uniform jury instructions.
2-836 Objections to instructions--copies to parties.
2-837 View by jury.
2-838 Deliberation of the jury.
2-839 Admonition of jury on separation.
2-840 Information after retirement.
2-841 When the jury may be discharged.
2-842 Re-trial.
2-843 Proof of official record.
2-844 Determination of foreign law.
2-845 Appointment and duties of masters.

TITLE 2
ARTICLE 8, TRIAL
SUBPART C
VERDICT

2-851 Findings by the Court.
2-852 Delivery of verdict.
2-853 Requisites of verdicts.
2-854 General and special verdict.
2-855 Special verdict and interrogatories.
2-856 Jury must assess amount of recovery.
2-857 Motions for a directed verdict and for judgment notwithstanding the verdict.

TITLE 2
ARTICLE 8, TRIAL
SUBPART D
MISCELLANEOUS TRIAL PROVISIONS

2-871 Provisions applicable to trials by Court.
2-872 Trial docket.
2-873 Trial docket for bar.
2-874 Order of trial of cases docketed.
2-875 Time of trial.
2-876 Continuances.
2-877 Trial by judicial panel.
2-878 Bifurcated jury trials.

TITLE 2
ARTICLE 9
PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

2-901 Seizure of person or property.
2-902 Receivers appointed by Tribal Courts.
2-903 Deposit in Court.
2-904 Process in behalf of and against persons not parties.
2-905 Security--proceedings against sureties.
2-906 Execution.

TITLE 2
ARTICLE 9, PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS
SUBPART A
INJUNCTIONS

2-911 Injunction defined.
2-912 Cause for injunction—temporary restraining order.
2-913 Temporary restraining order; notice; hearing; duration.
2-914 Temporary restraining order--Service.
2-915 Preliminary injunction.
2-916 Preliminary injunction--criteria.
2-917 Form and scope of injunction or restraining order.
2-918 Employer and employee; interpleader; constitutional cases.
2-919 Security.
2-920 Use of affidavits.
2-921 Injunction by defendant.
2-922 Injunction is equitable.
2-923 Modification of preliminary injunction.
2-924 Modification of permanent injunction.
2-925 Injunctions tried to the Court.
2-926 Enforcement of restraining orders and injunctions.

TITLE 2
ARTICLE 9, PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS
SUBPART B
REPLEVIN

2-931 Order of delivery--procedure.
2-932 Penalty for damage of property subject to order of delivery.
2-933 Undertaking in replevin.
2-934 Replevin bond--value.
2-935 Order of delivery.
2-936 Order returnable.
2-937 Execution or order.
2-938 Re-delivery on bond.
2-939 Exception to sureties.
2-940 Proceedings on failure to prosecute action.
2-941 Judgment--damages--attorney fees.
2-942 Officer may break into building.
2-943 Compelling delivery by attachment.
2-944 Improper issue of order of delivery.
2-945 Joinder of cause of action for debt--stay of judgment.

TITLE 2
ARTICLE 9, PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS
SUBPART C
ATTACHMENT

2-951 Grounds for attachment.
2-952 Attachment affidavit.
2-953 Attachment bonds.
2-954 Order of attachment.
2-955 When returnable.
2-956 Order of execution.
2-957 Execution of attachment order.
2-958 Service of order.
2-959 Re-delivery on bond.

TITLE 2
ARTICLE 9, PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS
SUBPART D
GARNISHMENT
(As adopted November 17, 2010)

2-961 Garnishment in aid of execution; when issued; procedure; court order; continuing lien; when invalid.
2-962 Priority of garnishments and liens.
2-963 Service upon garnishee; notice; hearing.
2-964 Answer; interrogatories; response; objections; contempt; hearing.
2-965 Exemptions from garnishment.

TITLE 2
ARTICLE 9, PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS
SUBPART E
PROVISIONS RELATING TO ATTACHMENT AND GARNISHMENT

(Reserved)

TITLE 2
ARTICLE 9, PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS
SUBPART F
RECEIVERS

2-992.1 Appointment of receiver.
2-992.2 Persons ineligible.
2-992.3 Oath and bond.
2-992.4 Powers of receiver.
2-992.5 Investment of funds.
2-992.6 Disposition of property litigated.
2-992.7 Punishment for disobedience of Court.
2-992.8 Vacation of appointment by appellate Court.

TITLE 2
ARTICLE 9, PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS
SUBPART G
EMINENT DOMAIN

2-993.1 Who may exercise authority.
2-993.2 What property may be condemned by eminent domain.
2-993.3 Condemnation of property.
2-993.4 Complaint.
2-993.5 Process in eminent domain.
2-993.6 Appearance or answer.
2-993.7 Amendment of pleadings.
2-993.8 Substitution of parties.
2-993.9 Dismissal of action.
2-993.10 Deposit and its distribution.
2-993.11 Costs.

TITLE 2
ARTICLE 10
JUDGMENT

2-1001 Judgment; costs.
2-1002 Default.
2-1003 Offer of judgment.
2-1004 Judgment for specific acts--vesting title.
2-1005 Summary judgment.
2-1006 Declaratory judgment.
2-1007 Entry of judgment.
2-1008 New trials; amendments of judgments.
2-1009 Relief from judgment or order.
2-1010 Harmless error.
2-1011 Stay of proceedings to enforce a judgment.
2-1012 Disability of a judge.
2-1013 Reserved.
2-1014 Judgment against infant.
2-1015 Judgments as liens.
2-1016 Discharge of money judgment liens.
2-1017 Additional case deposits.
2-1018 Reversal by appellate Court.
2-1019 Interest on money judgments.
2-1020 Exempt property.
2-1020.1 Payment of judgments from individual Indian moneys.

TITLE 2
ARTICLE 10, JUDGMENT
SUBPART A
FOREIGN JUDGMENTS

2-1021 Definition.
2-1022 Filing and status of foreign judgments.
2-1023 Grounds for non-recognition.
2-1024 Notice of filing.
2-1025 Stay of execution of foreign judgment.
2-1026 Fees.
2-1027 Optional procedure.

TITLE 2
ARTICLE 10, JUDGMENT
SUBPART B
EXECUTION

2-1031 Execution--defined.
2-1032 Kinds of executions.
2-1033 Property subject to levy.
2-1034 Property bound after seizure.
2-1035 Execution must be issued within five years.
2-1036 Priority among property.
2-1037 Priority among executions.
2-1038 Levy by priority.
2-1039 Who makes levy.
2-1040 When levy void.
2-1041 Penalty for unlawful levy.
2-1042 Levy on property claimed by third person.
2-1043 Re-delivery to defendant.
2-1044 Notice of sale of chattels.
2-1045 Further levy when property taken, insufficient.
2-1046 Filing and indexing of execution.
2-1047 Waiver of appraisement.
2-1048 Return of appraisement.
2-1049 When lien restricted.
2-1050 Notice of sale of realty.
2-1051 Confirmation of sale.
2-1052 Police chief's deed.
2-1053 Advance of printer's fees.
2-1054 Demand for printing fees.
2-1055 Place of sale.
2-1056 Other executions of realty not sold.
2-1057 Levy on realty under several executions.
2-1058 Deed by successor of officer making sale.
2-1059 Payment to defendant of overplus after sale.
2-1060 Reversal of judgment after sale of interest in land.
2-1061 Execution of judgment in favor of Tribe.
2-1062 Reappraisal where realty twice advertised for sale.
2-1063 Return of execution.
2-1064 Principal and surety.
2-1065 Hearing on assets.

TITLE 2
ARTICLE 10, JUDGMENT
SUBPART C
CONTRIBUTION

2-1071 Joint debtors or sureties.
2-1072 Joint tort-feasor; contribution; indemnity; exemptions; covenant not to sue, etc.

TITLE 2
ARTICLE 10, JUDGMENT
SUBPART D
COSTS

2-1081 Affidavit in forma pauperis.
2-1082 False swearing in such case.
2-1083 Costs where defendants disclaim.
2-1084 Certain costs taxed at discretion of Court.
2-1085 Costs to successful party as matter of course.
2-1086 Costs in other cases.
2-1087 Several actions on joint instruments.
2-1088 Clerk to tax costs.
2-1089 Cost of notice or other legal publication.
2-1090 Attorney fees taxable as costs.
2-1091 Costs defined.
2-1092 Authority of Court to fix cost rates.

TITLE 2
ARTICLE 11
LIMITATION OF ACTIONS

2-1101 Limitations applicable.
2-1102 Limitation of real actions.
2-1103 Persons under disability-- in real property actions.
2-1104 Limitation of other actions.
2-1105 Persons under disability in actions other than real property actions.
2-1106 Absence or flight of defendant.
2-1107 Limitation of new action after failure.
2-1108 Extension of limitation.
2-1109 Statutory bar absolute.
2-1110 Law governing foreign claims.
2-1111 Limitation of building construction tort claims.

TITLE 2
ARTICLE 12
FAMILY RELATIONS

2-1201 Recording of marriages and divorces.
2-1202 Tribal custom marriage and divorce.
2-1203 Tribal custom adoption.
2-1204 Determination of paternity and support.
2-1205 Determination of heirs.
2-1206 Approval of wills.

TITLE 2
ARTICLE 12, FAMILY RELATIONS
SUBPART A
STATUTORY DIVORCE

2-1211 Grounds for divorce.
2-1212 Residence of plaintiff or defendant.
2-1213 Personal jurisdiction.
2-1214 Custody of children, disposition of property.
2-1215 Orders concerning property, children, support and expenses.
2-1216 Care and custody of children.
2-1217 Preference of child.
2-1218 Paternity determination.
2-1219 Interest on delinquent payments.
2-1220 Restoration of wife's maiden name.
2-1221 Disposition of property.
2-1222 Effect of divorce.
2-1223 Remarriage and cohabitation.
2-1224 Punishment for certain remarriage and cohabitation.
2-1225 Remarriage within six months.
2-1226 Time when judgment final.
2-1227 Avoidance of marriage of incompetents.
2-1228 Alimony without divorce.
2-1229 Evidence.
2-1230 Setting aside of divorce decrees.
2-1231 Termination of money payments.
2-1232 Mailing of alimony and support payments.
2-1233 Modification of decree.
2-1234 Effect on common law divorce.
2-1235 Requirement of parenting education.

TITLE 2
ARTICLE 13
FORCIBLE ENTRY AND DETAINER

2-1301 Forcible entry and detention.
2-1302 Powers of Court.
2-1303 Extent of jurisdiction.
2-1304 Issuance and return of summons.
2-1305 Service of summons.
2-1306 Constructive service of summons.
2-1307 Answer or affidavit by defendant.
2-1308 Trial by Court.
2-1309 Procedure where no jury available.
2-1310 Attorney fee.
2-1311 Writ of execution; form; new trial.
2-1312 Stay of execution.
2-1313 Forcible entry and detainer action on small claims docket.
2-1314 Affidavit; form.
2-1315 Summons; form.

TITLE 2
ARTICLE 14
HABEAS CORPUS

2-1401 Persons who may prosecute writ.
2-1402 Application for writ.
2-1403 Writ granted.
2-1404 Direction and command of writ.
2-1405 Delivery to Tribal police chief.
2-1406 Service on party other than Tribal police chief.
2-1407 Service when person not found.
2-1408 Return and enforcement of writ.
2-1409 Manner of return.
2-1410 Proceedings in case of sickness or infirmity.
2-1411 Hearings and discharge.
2-1412 Limits on inquiry.
2-1413 Writ upon temporary commitment.
2-1414 Writ may issue to admit to bail.
2-1415 Notice to interested persons.
2-1416 Powers of Court.
2-1417 Officers not liable for obeying orders.
2-1418 Issuance of warrant of attachment.
2-1419 Arrest of party causing restraint.
2-1420 Execution of warrant of attachment.
2-1421 Temporary orders.
2-1422 Issuance and service on Sunday.
2-1423 Issue of process.
2-1424 Protection of infants and insane persons.
2-1425 Security for costs not required.

TITLE 2
ARTICLE 15
MANDAMUS

2-1501 Function of mandamus.
2-1502 Writ not issued where remedy at law.
2-1503 Forms and contents of writs.
2-1504 When peremptory writ of issues.
2-1505 Petition upon affidavit.
2-1506 Allowance and service of writ.
2-1507 Answer.
2-1508 Failure to answer.
2-1509 Similarity to civil action.
2-1510 Recovery by plaintiff.
2-1511 Damages bar further actions.
2-1512 Penalty for refusal or neglect to perform.

TITLE 2
ARTICLE 16
QUO WARRANTO

2-1601 Quo Warranto; relief obtainable by civil action.
2-1602 Grounds for action.
2-1603 Persons who may bring action.
2-1604 Judgment is contest of office.
2-1605 Judgment for plaintiff.
2-1606 Enforcement of judgment.
2-1607 Separate action for damages.
2-1608 Corporation.

TITLE 2
ARTICLE 17
SMALL CLAIMS PROCEDURE

2-1701 Small claims.
2-1702 Small claims affidavit.
2-1703 Preparation of affidavit.
2-1704 Service of affidavit.
2-1705 Date for appearance.
2-1706 Transfer of actions.
2-1707 Counterclaim or setoff.
2-1708 Actions for amounts exceeding excess of two thousand dollars.
2-1709 Attachment or garnishment, other matters.
2-1710 Trial by Court.
2-1711 Payment of judgment.
2-1712 Appeals.
2-1713 Fees.
2-1714 Costs.
2-1715 Judgments rendered under small claims procedure.
2-1716 Fee for docketing judgment.
2-1717 Other action in small claims Court.

TITLE 2
CIVIL PROCEDURE

(As redesignated February 24, 1994)

ARTICLE 1
GENERAL PROVISIONS

2-101 Scope of this Act.
2-102 Jurisdiction in civil actions.
2-103 Title of this Act.
2-104 Force of the Tribal common law
2-105 Definitions.
2-106 No effect upon sovereign immunity.
2-107 Declaratory judgment.
2-108 Court costs not charged to Tribe.
2-109 Effect of previous Court decisions.
2-110 C.F.R. not applicable.
2-111 Laws applicable to civil action.
2-112 Court action when no procedure provided.

2-101 Scope of this Act. This Act governs the procedure in the Courts of the Tribe in all suits of a civil nature whether cognizable as cases at law or in equity except where a law or ordinance of the Tribe specifies a different procedure. These Rules shall be construed to secure the just, speedy and inexpensive determination of every action. [TCR 86-109]

2-102 Jurisdiction in civil actions. The Tribal Court may exercise jurisdiction over any person or subject matter on any basis consistent with the Constitution of the Tribe, the Indian Civil Rights Act of 1968, as amended, any specific restrictions or prohibitions contained in federal law. [TCR 86-109]

2-103 Title of this Act. This Act shall be known as the Code of Civil Procedure. [TCR 86-109]

2-104 Force of the Tribal common law. The customs and traditions of the Tribe, to be known as the Tribal common law, as modified by the Tribal Constitution and statutory law, judicial decisions, and the condition and wants of the people, shall remain in full force and effect within the Tribal jurisdiction in like force with any statute of the Tribe insofar as the common law is not so modified, but all Tribal statutes shall be liberally construed to promote their object. [TCR 86-109]

2-105 Definitions. Unless a different meaning is clearly apparent from the context, the term:

1. "Chief executive officer" shall mean the executive director or a similarly styled and structured position in the administration of the government of the Tribe.
2. "Other Indian Tribe" shall mean any federally-recognized Indian tribe other than this Tribe.
3. "Real property" or "non-trust interest in real property" shall mean any interest in real property within the Tribal jurisdiction other than the Indian trust title held by the United States for the use of any Indian or Indian tribe, or the fee title to any land held by any Indian or Indian tribe which is subject to restriction upon alienation imposed by the United States. Nothing in this Act shall be construed as affecting or attempting to affect the trust or restricted title or trust or restricted Indian land.
4. "Reservation" means all the territory within the exterior boundaries of the Winnebago Indian Reservation (including Flowers Island and other Tribal land located east of the Missouri River) as set forth in the Winnebago Treaty of March 8, 1865 (14 Stat. 671) and the twenty (20) sections included in the strip purchased in Nebraska for Wisconsin Winnebagos (18 Stat. 170), June 22, 1874 and such lands as may be added thereto by Congress or the Tribe or reaffirmation of the title

to lands through the Courts to the Tribe, except as otherwise provided by law. This definition of territorial jurisdiction includes all rights-of-way, waterways, streams, lakes, highways, railroad rights-of-way, mineral rights, etc.

5. "Tribal legislative body" means the Tribal Council of the Winnebago Tribe of Nebraska.
6. "Tribe" means the Winnebago Tribe of Nebraska unless the context clearly indicates another meaning. [TCR 86-109, 94-07]

2-106 No effect upon sovereign immunity. Nothing in this Act shall be construed to be a waiver of the sovereign immunity of the Tribe, its officers, employees, agents, or political subdivisions or to be a consent to any suit beyond the limits now or hereafter specifically stated by Tribal law. [TCR 86-109]

2-107 Declaratory judgment. The Court, in any actual controversy before it, shall have the authority to declare the rights of the parties of that suit in order to resolve disputes even though a money judgment or equitable relief is not requested or not due. In particular, the Court may issue its declaratory judgment recognizing Tribal common law marriages and divorces, and provide for the custody of children and division of property in such divorces. [TCR 86-109]

2-108 Court costs not charged to Tribe. The Tribe, its officers, employees, agents, or political subdivisions acting in their official capacity shall not be charged or ordered to pay any Court costs or attorney fees under this Act, but if these entities prevail in the action, the cost which such entities would have been required to pay may be charged as costs to the losing party as in other cases. [TCR 86-109]

2-109 Effect of previous Court decisions. All previous decisions of the Courts of the Tribe, insofar as they are not inconsistent with this Act, shall continue to have precedential value in the Tribal Court. [TCR 86-109]

2-110 C.F.R. not applicable. Any and all provisions of part 11 of Title 25 of the Code of Federal Regulations as presently or hereafter constituted are declared to be not applicable to the Tribe. [TCR 86-109]

2-111 Laws applicable to civil actions.

1. In all civil cases, the Tribal Court shall apply:
   A. The Constitution, statutes, and common law of the Tribe not prohibited by applicable federal law, and, if none, then
   B. The federal law including federal common law, and, if none, then
   C. The laws of any state or other jurisdiction which the Court finds to be compatible with the public policy and needs of the Tribe.
2. No federal or state law shall be applied to a civil action pursuant to paragraphs (B) and (C) of subsection (1) of this Section if such law is inconsistent with the laws of the Tribe or the public policy of the Tribe.
3. Where any doubt arises as to the customs and usages of the Tribe, the Court, either on its own motion or the motion of any party, may subpoena and request the advice of elders and counselors familiar with those customs and usages. [TCR 86-109, 94-07]

2-112 Court action when no procedure provided. In any case in which no specific procedure is provided for by Tribal laws or Court rules, the Court may proceed in any lawful fashion not inconsistent with Tribal law, the rules of the Court, or the Indian Civil Rights Act. [TCR 86-109]

TITLE 2
ARTICLE 2
COMMENCEMENT OF ACTION; PLEADINGS, MOTIONS AND ORDERS

2-201 Commencement of action.
2-202 One form of action.
2-203 "Claim" defined.
2-204 Notice of pendency of action.
2-205 Notice of pendency contingent upon service.
2-206 Special notice for actions pending in other Courts.
2-207 Pleadings allowed; form of motions.
2-208 General rules of pleading.
2-209 Pleading special matters.
2-210 Form of pleadings, motions, and briefs.
2-211 Signing of pleadings.
2-212 Defenses and objections—when and how presented--by pleadings or motions--motion for judgment on the pleadings.
2-213 Final dismissal on failure to amend.
2-214 Counterclaim and cross-claim.
2-215 Counterclaim: effect of the statute of Limitations.
2-216 Counterclaims against assigned claims.
2-217 Third-party practice.
2-218 Amended and supplemental pleadings.
2-219 Pre-trial procedure, formulating issues.
2-220 Lost pleadings.
2-221 Tenders of money or property.
2-222 Dismissal of actions.

2-201 Commencement of Action. A civil action is commenced by filing a complaint with the Court. [TCR 86-109]

2-202 One form of action. There shall be one form of action to be known as a "civil action." [TCR 86-109]

2-203 "Claim" defined. As used in this Act, the term "claim" means any right of action which may be asserted in a civil action or proceeding and includes, but is not limited to, a right of action created by statute. [TCR 86-109]

2-204 Notice of pendency of action. Upon the filing of a complaint in the Tribal Court, the action is pending so as to charge third persons with notice of its pendency. While an action is pending, no third person shall acquire an interest in the subject matter of the suit as against the plaintiff's title, except as provided in Sections 2-205 and 2-206 of this Act. [TCR 86-109, 94-07]

2-205 Notice of pendency contingent upon service. Notice of the pendency of an action shall have no effect unless service of process is made upon the defendant within one hundred twenty days after the filing of the petition. [TCR 86-109]

2-206 Special notice for actions pending in other Courts. No action pending in either state or federal Court, or the Court of any other Indian tribe, shall constitute notice with respect to any real property or personal property located within the Tribal jurisdiction until a notice of pendency of the action, identifying the case and the Court in which it is pending and giving the legal description of the land affected, or the description of the personal property and its location (if known) affected by the action, is filed of record in the office of the clerk of the Tribal Court. [TCR 86-109]

2-207 Pleadings allowed; form of motions.

1. Pleadings. There shall be a complaint and answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Section 2-217; and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the Court may order a reply to an answer or a third-party answer.
2. Motions and other papers.
   A. An application to the Court for an order shall be by motion which, unless made during a hearing or trial, shall:
      i. be made in writing;
      ii. state with particularity the grounds therefor; and
      iii. set forth the relief or order sought.

   The requirement of a writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.
   B. The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these Rules.
   C. All motions shall be signed in accordance with Section 2-211 of this Act. [TCR 86-109]

2-208 General rules of pleading.

1. Claims for relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (A) a short and plain statement of the claim showing that the pleader is entitled to relief, and (B) a demand for judgment for the relief the pleader seeks. Relief in the alternative or of several different types may be demanded.
2. Defenses; form of denials. A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state, and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader may make denials as specific denials of designated averments or paragraphs or may generally deny all the averments except such designated averments or paragraphs as the pleader expressly admits; but, when the pleader does not so intend to controvert all its averments, including averments of the grounds upon which the Court's jurisdiction depends, the pleader may do so by general denial subject to the obligations set forth in Section 2-211.
3. Affirmative defenses. In pleading to a preceding pleading, a party shall set forth affirmatively each of the following defenses relied upon:
   A. Accord and satisfaction;
   B. Arbitration and award;
   C. Assumption of risk;
   D. Contributory negligence;
   E. Discharge in bankruptcy;
   F. Duress;
   G. Estoppel;
   H. Failure of consideration;
   I. Fraud;
   J. Illegality;

K. Injury by fellow servant;
L. Laches;
M. License;
N. Payment;
O. Release;
P. Res judicata;
Q. Statute of frauds;
R. Statute of limitations;
S. Waiver;
T. Any other matter constituting an avoidance or affirmative defense.

When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the Court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

4. Effect of failure to deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.
5. Pleading to be concise and direct; consistency.
   A. Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleadings or motions are required.
   B. A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them, if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal, equitable, or other grounds. All statements shall be made subject to the obligations set forth in Section 2-211 of this Act.
6. Construction of pleadings. All pleadings shall be so constructed as to do substantial justice. [TCR 86-109, 94-07]

2-209 Pleading special matters.

1. Capacity. It is not necessary to aver the capacity of a party to sue or to be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, except to the extent required to show the jurisdiction of the Court. When a party desires to raise an issue as to the legal existence of a party or the capacity of any party to sue or be sued, or the authority of a party to sue or be sued in a representative capacity, the party shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge, and that party shall have the burden of proof on that issue.
2. Fraud, mistake, condition of the mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other conditions of mind of a person may be averred generally.
3. Conditions precedent. In pleading the performance or occurrence it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.
4. Official document or act. In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law.

5. Judgment. In pleading a judgment or decision of a domestic or foreign Court, judicial or quasi-judicial, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.
6. Time and place. For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.
7. Special damage. When items of special damage are claimed, they shall be specifically stated. [TCR 86-109, 94-07]

2-210 Form of pleadings, motions, and briefs.

1. Caption; names of parties. Every pleading shall contain a caption setting forth the name of the Court, the title of the action, the file number, and a designation of the type of pleading in the terms expressed in Section 2-207(1). In the complaint, the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties. In the initial third-party complaint, counterclaim, cross-claim, motion and petition in intervention or a pleading by a party suing or being sued in a representative capacity, appropriate designations of all affected parties shall be made and their names stated. Thereafter, papers relating to such matters may contain only the name of the first party in each category with an appropriate indication of other parties.
2. Paragraphs; separate statements. All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as is practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings, motions, or briefs. Each claim founded upon a separate transaction or occurrence and each defense founded upon other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.
3. Adoption by reference; exhibits. Statements in a pleading, motion, or brief may be adopted by reference in a different part of the same pleading or in another pleading or in any motion or brief. A copy of any written instrument which is an exhibit to a pleading, or a motion, or a brief is a part thereof for all purposes. [TCR 86-109]

2-211 Signing of pleadings. Every pleading of a party represented by a licensed attorney or advocate shall be signed by at least one attorney or advocate of record in his/her individual name, whose address and telephone number shall be stated. A party who is not represented by an attorney or advocate shall sign his/her pleading and state his/her address and telephone number. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The English and American Common Law Rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is not applicable in the Tribal Courts. The signature of an attorney or advocate constitutes a certificate by him/her that he/she has read the pleading; that to the best of his/her knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this Section, it may be stricken as sham and false and the action may proceed as though the pleading had not been served. For a willful violation of this Section, an attorney or advocate may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted. [TCR 86-109]

2-212 Defenses and objections—when and how presented—by pleadings or motions—motion for judgment on the pleadings.

1. When presented.
   A. A defendant shall serve an answer within twenty days after the service of the summons and complaint upon that defendant, except when service is made under any one of Sections 2-316, 2-318 or 2-321 of this Act and a different time is prescribed in the order of Court, or under a statute of the Tribe. A party served with a pleading stating a cross-claim against him/her shall serve an answer thereto within twenty days after the service upon him/her. The plaintiff shall serve his/her reply to a counterclaim in the answer within twenty days after service of the answer, or, if a reply is ordered by the Court, within twenty days after the service of the order unless the order otherwise directs. The Tribe or an officer or agency thereof shall serve an answer to the complaint or to a cross-claim, or a reply to a counterclaim, within sixty days after the service upon the Tribal attorney, chief executive officer and chairman, (or the chief executive officer of the Tribe if there is no Tribal attorney) of the pleading in which the claim is asserted, provided that no default judgment shall be entered against the Tribe, and upon affidavit of the chief executive officer of the Tribe that the Tribe has no attorney but that an attorney contract is pending for Bureau of Indian Affairs approval, the Court shall allow the Tribe to answer within twenty days after the approval of the attorney contract or within sixty days after service, whichever is later.
   The service of a motion permitted under this Section alters these periods of time as follows, unless a different time is fixed by order of the Court: (i) if the Court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within ten days after notice of the Court's action; (ii) if the Court grants a motion for a more definite statement, the responsive pleading shall be served within ten days after the service of the more definite statement.
   B. Within the time in which an answer may be served, a defendant may file an entry of reappearance and reserve twenty additional days to answer or otherwise defend. Any entry of appearance shall extend the time to respond twenty days from the last date for answering and is a waiver of all defenses numbered B, C, D, E and I of paragraph (2) of this Section, provided, that a waiver of sovereign immunity shall not be implied under defense I of paragraph (2) of this Section since a defense based upon sovereign immunity is a defense to the subject matter jurisdiction of the Court and not a defense to the parties' capacity to be sued.
2. How presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may, at the option of the pleader, be made by motion:
   A. Lack of jurisdiction over the subject matter;
   B. Lack of jurisdiction over the person;
   C. Improper venue;
   D. Insufficiency of process;
   E. Insufficiency of service of process;
   F. Failure to state a claim upon which relief can be granted;
   G. Failure to join a party under Section 2-403;
   H. Another action pending between the same parties for the same claim;
   I. Lack of capacity of a party to be sued; and
   J. Lack of capacity of a party to sue.

A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting defense (F) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Section 2-1005, and all parties shall be given reasonable opportunity to present all materials made pertinent to such a motion by Section 2-1005. Every motion to dismiss shall be accompanied by a concise brief in support of that motion unless waived by order of the Court.

3. Motion for judgment on the pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Section 2-1005, and all parties shall be given reasonable opportunity to present all materials made pertinent to such motion by Section 2-1005.
4. Preliminary hearings. The defenses specifically enumerated (A)-(J) in subdivision (2) of this Section, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (3) of this Section shall be heard and determined before trial on application of any party, unless the Court orders that the hearing and determination thereof be deferred until the trial.
5. Motion for more definite statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the Court is not obeyed within ten days after notice of the order or within such other time as the Court may fix, the Court may strike the pleading to which the motion was directed or make such order as it deems just.
6. Motion to strike. Upon motion made by a party before responding to a pleading, or, if no responsive pleading is permitted by this Act, upon motion made by a party within twenty days after the service of the pleading upon the party or upon the Court's own initiative at any time, the Court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.
7. Consolidation of defenses in motion. A party who makes a motion under this Section may join with it any other motions herein provided for and then available to the party. If a party makes a motion under this Section but omits therefrom any defense or objection then available to the party which this Section permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (8)(B) hereof on any of the grounds there stated.
8. Waiver or preservation of certain defenses.
   A. A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, insufficiency of service of process or lack of capacity of a party to sue is waived (i) if omitted from a motion in the circumstances described in subdivision (7), or (ii) if it is neither made by motion under this Section nor included in a responsive pleading or an amendment thereof permitted by Section 2-218(1) to be made as a matter of course, or (iii) if a permissive counterclaim is filed pursuant to Section 2-214(2).
   B. A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Section 2-403, and an objection of failure to state a legal defense to a claim, and a defense of another action pending may be made in any

pleading permitted or ordered under Section 2-207(1), or by motion for judgment on the pleadings, or at the trial on the merits.

C. Whenever it is determined, upon suggestion of the parties or otherwise that the Court lacks jurisdiction of the subject matter, the Court shall dismiss the action. [TCR 86-109, 94-07, 94-25]

2-213 Final dismissal on failure to amend. On granting a motion to dismiss a claim for relief, the Court shall grant leave to amend if the defect can be remedied and shall specify the time within which an amended pleading shall be filed which should normally be ten days absent good cause for a shorter or longer time. If the amended pleading is not filed within the time allowed, final judgment of dismissal with prejudice shall be entered on motion except in cases of excusable neglect. In such cases, amendment shall be made by the party in default within a time specified by the Court for filing an amended pleading. Within the time allowed by the Court for an amended pleading, a plaintiff may voluntarily dismiss the action without prejudice. [TCR 86-109]

2-214 Counterclaim and cross-claim.

1. Compulsory counterclaims. A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the Court cannot acquire jurisdiction. But the pleader need not state the claim if (A) at the time the action was commenced the claim was the subject of another pending action, or (B) the opposing party brought suit upon the claim by attachment or other process by which the Court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any other counterclaim under this Section.
2. Permissive counterclaims. A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.
3. Counterclaim exceeding opposing claim. A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.
4. Counterclaim against the Tribe. This Act shall not be construed to enlarge beyond the limits now fixed by law the right to assert counterclaims or to claim credits against the Tribe or an officer or agency thereof. A compulsory counterclaim does not waive the defense of sovereign immunity when made by the Tribe or an officer or an agency thereof. A permissive counterclaim waives the defense of sovereign immunity for the purpose of determining the permissive counterclaim stated by the Tribe, its officer, or agency, but does not waive such defense for any other purpose.
5. Counterclaim maturing or acquired after pleading. A claim which either matured or was acquired by the pleader after serving a pleading may, with the permission of the Court, be presented as a counterclaim by supplemental pleading.
6. Omitted counterclaim. When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, the pleader may by leave of Court set up the counterclaim by amendment, except that when such amendment is served within the time otherwise allowed for amendment without leave of the Court by Section 2-218(1) of this Act.
7. Cross-claim against co-party. A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is

asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

8. Joinder of additional parties. Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Sections 2-403 and 2-404.

9. Separate trials; separate judgments. If the Court orders separate trials as provided in Section 2-806(2), judgment on a counterclaim, or cross-claim, may be rendered in accordance with the terms of Section 2-1001(2) when the Court has jurisdiction to do so, even if claims of the opposing party have been dismissed or otherwise disposed of. [TCR 86-109, 94-07]

2-215 Counterclaim: effect of the statute of limitations.

1. Where a counterclaim and the claim of the opposing party arise out of the same transaction or occurrence, the counterclaim shall not be barred by a statute of limitation notwithstanding that it was barred at the time the petition was filed, and the counterclaimant shall not be precluded from recovering an affirmative judgment.
2. Where a counterclaim and the claim of the opposing party:
   A. Do not arise out of the same transaction or occurrence; and
   B. Both claims are for money judgments; and
   C. Both claims had occurred before either was barred by a statute of limitations; and
   D. The counterclaim is barred by a statute of limitations at the time that it is asserted, whether in an answer or an amended answer, the counterclaim may be asserted only to reduce the opposing party's claim.
3. Where a counterclaim was barred by a statute of limitations before the claim of the opposing party arose, the barred counterclaimant cannot be sued for any purpose. [TCR 86-109]

2-216 Counterclaims against assigned claims. A party, other than a holder in due course, who acquired a claim by assignment or otherwise, takes the claim subject to any defense or counterclaims that could have been asserted against the person from whom he/she acquired the claim, but the recovery on a counterclaim may be asserted against the assignee only to reduce the recovery of the opposing party. [TCR 86-109]

2-217 Third-party practice.

1. When defendant may bring in third party. At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff. The third-party plaintiff need not obtain leave to make the service if the third-party plaintiff files the third-party complaint not later than ten days after serving the original answer. Otherwise the third-party plaintiff must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall make any defenses to the third-party plaintiff's claim as provided in Section 2-212 and any counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Section 2-214. The third-party plaintiff may assert against the plaintiff any defenses which the third party has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert any defenses as provided

in Section 2-212 and any counterclaims and cross-claims as provided in Section 2-214. A third-party defendant may proceed under this Section against any person who is not a party to the action who is or may be liable to the third-party defendant for all or part of the claim made in action against the third-party defendant. Any party may move to strike the third-party claim, or for its severance or separate trial.

2. When plaintiff may bring in third party. When a counterclaim is asserted against a plaintiff, the plaintiff may cause a third party to be brought in under circumstances which under this Section would entitle a defendant to do so.
3. Party defendants in real property actions. Abrogated. [TCR 86-109, 94-07]

2-218 Amended and supplemental pleadings.

1. Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within twenty days after it is served. Otherwise a party may amend the party's pleading only by leave of the Court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ten days after service of the amended pleading, whichever period may be the longer, unless the Court otherwise orders.
2. Amendments to conform to the evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the Court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the Court that the admission of such evidence would prejudice the party in maintaining the party's action or defense upon the merits. The Court may grant a continuance to enable the objecting party to meet such evidence. Where the pre-trial conference order has superseded the pleadings, the pre-trial order is controlling, and it is sufficient to amend the order and the pleadings need not be amended.
3. Relation back of amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him/her, the party to be brought in by amendment (A) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (B) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party. The delivery or mailing of process to the Tribal attorney, or his/her designee, or the Tribal Chairman, the Chief Executive Officer and a Tribal Council member, or an agency or officer thereof who would have been a proper defendant if named, satisfies the requirement of clauses (1) and (2) of this subparagraph (3) with respect to the Tribe or any agency or officer thereof to be brought into the action as a defendant.
4. Supplemental pleadings. Upon motion of a party the Court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which would have happened since the date of the pleading sought to be

supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the Court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor. [TCR 86-109, 94-07]

2-219 Pre-trial procedure; formulating issues.

1. In any action, the Court may in its discretion direct the attorneys for the parties and any unrepresented parties to appear before it for a conference to consider:
   A. The simplification of the issues;
   B. The necessity or desirability of amendments to the pleadings;
   C. The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
   D. The identification of witnesses and documents;
   E. The advisability of a preliminary reference of issues to a master or other Tribal Court judge for findings to be used as evidence when the trial is to be by jury;
   F. Such other matters as may aid in the disposition of the action.
2. The Court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The Court in its discretion may establish by rule a pre-trial calendar on which actions may be placed for consideration as above provided and may either confine the calendar to jury actions or to non-jury actions or extend it to all actions. [TCR 86-109, 94-07]

2-220 Lost pleadings. If a pleading be lost or withheld by any person, the Court may allow a copy thereof to be substituted. [TCR 86-109]

2-221 Tenders of money or property. When a tender of money or property is alleged in any pleading, it shall not be necessary to deposit the money or property in Court when the pleading is filed, but it shall be sufficient if the money or property is deposited in Court at trial, or when ordered by the Court. [TCR 86-109]

2-222 Dismissal of actions.

1. Voluntary dismissal: effect thereof.
   A. By plaintiff: by stipulation. Subject to the provisions of Section 2-407 or Section 2-902 or any statute of the Tribe, an action may be dismissed by the plaintiff without order of the Court.
      i. by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion of summary judgment, whichever first occurs; or
      ii. by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal without the consent of the defendants operates as an adjudication upon the merits when filed by a plaintiff who has once voluntarily dismissed, with the consent of the defendants, in any Court of any Indian Tribe, the United States, or any state an action based on or including the same claim, unless such previous dismissal was

entered due to inability to obtain personal jurisdiction over an indispensable party or lack of subject matter jurisdiction in the Court in which the case was previously filed. If the plaintiff claims either or both of these exceptions, it shall so state in its notice of dismissal and shall apply to the Tribal Court, upon notice to all adverse parties, for an order determining that the previous dismissal was within one or both of the two stated exceptions and that the plaintiff was entitled to dismiss the current action without prejudice. The Court may grant such application in its discretion and allow the plaintiff to dismiss without prejudice on such terms as are just, due regard being had for costs, attorney fees, and inconvenience of the defendants, and any apparent motive to harass, embarrass, or delay the defendants.

B. By order of the Court. Except as provided in paragraph (A) of this subdivision of this Section, an action shall not be dismissed at the plaintiff's instance save upon order of the Court and upon such terms and conditions as the Court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the Court. Unless otherwise provided in the order, a dismissal under this paragraph is without prejudice.

2. Involuntary dismissal: effect thereof. For failure of the plaintiff to prosecute or to comply with this Act, any Court rule, or any order of the Court, a defendant may move for dismissal of an action or of any claim against the defendant. After the plaintiff, in an action tried with the Court without a jury, has completed the presentation of his/her evidence, the defendant, without waiving his/her right to offer evidence in the event the motion is not granted, may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The Court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the Court renders judgment on the merits against the plaintiff, the Court shall make findings as provided in Section 2-851(1). Unless the Court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this Section, other than a dismissal for lack of jurisdiction, or for failure to join a party under Section 2-403, operates as an adjudication upon the merits.

3. Dismissal of counterclaim, cross-claim, or third-party claim. The provisions of this Section apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to paragraph (A) of subdivision (1) of this Section shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing. [TCR 86-109, 94-07, 94-07]

TITLE 2
ARTICLE 3
PROCESS, SUMMONS, FILING OF PLEADINGS AND OTHER PAPERS

2-301 Issuance of summons.
2-302 Form of summons.
2-303 Who may serve process personally.
2-304 Service of process by mail.
2-305 Service by publication.
2-306 Publication service upon parties and the unknown successors of named parties.
2-307 Publication notice for recovery of money.
2-308 Publication notice in quiet title actions.
2-309 Completion of publication service.
2-310 Entry of default on party served by publication.
2-311 Vacating default judgments where service is by publication.
2-312 Certain technical errors not grounds for vacating judgment.
2-313 Hearing of "successors" for publication purposes.
2-314 Minimum contacts required for effective long arm service.
2-315 Consent is effective substitute for service.
2-316 Service pursuant to Court order.
2-317 Summons and complaint; person to be served.
2-317.1 Effect of service of some or several defendants.
2-318 Service upon party not inhabitant of or found within the territorial limits of the reservation.
2-319 Territorial limits of effective service.
2-320 Return of service of process.
2-321 Alternative provisions for service in a foreign country.
2-322 Subpoena.
2-330 Summons, time limit for service.
2-331 Service and filing of pleadings and other papers.
2-340 Time.
2-341 General cases in which extraterritorial service authorized.
2-342 Legal newspaper.

2-301 Issuance of summons. Upon the filing of a complaint, the Court clerk shall forthwith issue a summons and deliver the summons for service with a copy of the complaint to the plaintiff or the plaintiff's attorney, Tribal police or Bureau of Indian Affairs Police officer or to a person specially appointed by the Court to serve it. Upon request of the plaintiff, separate or additional summons shall issue against any defendants. [TCR 86-109, 94-07]

2-302 Form of summons. The summons shall be signed by the Court clerk, be under the seal of the Court, contain the name of the Court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which this Act requires the defendant to appear and defend, and shall notify the defendant that in case of the defendant's failure to do so, judgment by default will be rendered against the defendant for the relief demanded in the complaint. When, under Section 2-318, service is made pursuant to a statute or rule of the Court, the summons, or notice, or order in lieu of summons shall correspond as nearly as may be to that required by the statute or rule of the Court. [TCR 86-109, 93-84, 94-07]

2-303 Who may serve process personally.

1. Process including a subpoena, if served in person, shall be served by a Tribal police officer, or a Bureau of Indian Affairs police officer, a person licensed to make service of process in civil cases pursuant to Court rule, or a person specially appointed by the Court for that purpose. A subpoena may also be served by any person over eighteen years of age who is not a party to the action.

2. When process has been served and return thereof is filed in the office of the Court clerk, a copy of the return shall be sent by the Court clerk to the serving party's attorney within three days after the return is filed.
3. Process, other than a subpoena, shall not be served by a party's attorney except as provided in Section 2-304 of this Article. A party shall not make service of process unless appearing without an attorney, in which case the party may make service of process in the same manner and to the same extent that an attorney for the party could have served that process under this Article.
4. The Court shall freely make special appointments to serve all process under this paragraph. [TCR 86-109, 94-07]

2-304 Service of process by mail.

1. A summons and petition, and a subpoena, may be served by mail by the plaintiff's attorney, or any person authorized to serve process pursuant to Section 2-303 of this Article.
2. Service by mail may be accomplished by mailing the subpoena, or a copy of the summons and petition, by certified mail, return receipt requested and delivery restricted to the addressee.
3. Service pursuant to this paragraph shall not be the basis for the entry of a default or a judgment by default unless the record contains a return receipt showing acceptance by the defendant or a returned envelope showing refusal of the process by the defendant. If delivery of the process is refused, upon the receipt of notice of such refusal and at least ten days before applying for entry of default or judgment by default, the person serving the process shall mail to the defendant by first-class mail postage prepaid a copy of the summons and petition and a notice that despite such refusal the case will proceed and that judgment by default will be rendered against him/her unless he/she appears to defend the suit. A copy of said notice and proof of mailing thereof shall be filed of record in the case prior to the entry of a judgment by default. Any such default or judgment by default shall be set aside upon motion of the defendant if the defendant demonstrates to the Court that the return receipt was signed or delivery was refused by an unauthorized person. Such motion shall be filed within one year after the defendant has notice of the default or judgment by default but in no event more than two years after the judgment.
4. In the case of an entity described in subsection (3) of Section 2-317 of this Article, acceptance or refusal by an officer or by any employee of the registered office or principal place of business who is authorized to or who regularly receives certified mail shall constitute acceptance or refusal by the party addressed.
5. In the case of governmental organization subject to suit, acceptance or refusal by an employee of the office of the officials specified in the appropriate subsection of Section 2-317 of this Article who is authorized to or who regularly receives certified mail shall constitute acceptance or refusal by the party addressed. [TCR 86-109]

2-305 Service by publication. Service of summons upon a named defendant may be made by publication when it is stated in the petition, verified by the plaintiff or his/her attorney, or in a separate affidavit by the plaintiff or his/her attorney filed with the Court, that with due diligence service cannot be made upon the defendant by any other method. [TCR 86-109]

2-306 Publication service upon parties and the unknown successors of named parties.

1. Service of summons upon named parties, the unknown successor of a named party, a named decedent, or a dissolved partnership, corporation, or other association may be made by publication when it is stated in the complaint, verified by the plaintiff or his/her attorney, or in a separate

affidavit by the plaintiff or his/her attorney filed with the Court, that the person who verified the complaint or the affiant does not know, and with due diligence cannot ascertain, the following:

A. Whether a person named as a party is living or dead, and, if dead, the names of whereabouts of his/her successors, if any.
B. The names or whereabouts of a party and the unknown successors, if any, of the named decedent or other parties.
C. Whether a partnership, corporation, or other association named as a party continues to have legal existence or not; or the name or whereabouts of its officers or successors.
D. Whether any person designed in a record as a trustee continues to be the trustee; or the names or whereabouts of the successors of the trustee.
E. The names or whereabouts of the owners or holder of special assessment improvement bonds, or any other bonds, sewer warrants or tax bills or similar instruments.

2. Service pursuant to this Section shall be made by publication of a notice, signed by the Court clerk, in a newspaper authorized by law to publish legal notices which is published within the reservation. If no newspaper authorized by law to publish legal notices is published within the reservation, the notice shall be published in same such newspaper of general circulation within the reservation which is published in an adjoining county.
3. All named parties, their unknown successors, and other persons who may be served by publication may be included in one notice. The notice shall state:
   A. The name of the Court in which the petition is filed.
   B. The names of the parties.
   C. Designate the parties whose unknown successors are being served, if any.
   D. That the named parties and their unknown successors have been sued and must answer the complaint or other pleading on or before a time to be stated (which shall not be less than thirty one days from the date of the publication), or judgment, the nature of which shall be stated, will be rendered accordingly.
   E. It is not necessary for the publication notice to state that the judgment will include recovery of costs in order for a judgment following the publication notice to include costs of suit.
4. If jurisdiction of the Court is based on property, any real property subject to the jurisdiction of the Court and any property or debts to be attached or garnished must be described in the notice.
5. Service is complete upon publication. [TCR 86-109]

2-307 Publication notice for recovery of money. When the recovery of money is sought, it is not necessary for the publication notice to state the separate items involved, but the total amount that is claimed must be stated. When interest is claimed, it is not necessary to state the rate of interest, the date from which interest is claimed, or that interest is claimed until the obligation is paid. [TCR 86-109]

2-308 Publication notice in quiet title actions. In an action to quiet title to real property, it is not necessary for the publication notice to state the nature of the claim or interest of either party, and in describing the nature of the judgment that will be rendered should the defendant fail to answer, it is sufficient to state that a decree quieting plaintiff's title to the described property will be entered. It is not necessary to state that a decree forever barring the defendant from asserting any interest in or to the property is sought or will be entered if the defendant does not answer. In quiet title action, notice shall be published twice. The second publication shall be not less than seven nor more than forty five days after the first publication. The answer shall be due thirty one days after the second publication, and service is complete upon the second publication. [TCR 86-109]

2-309 Completion of publication service. Service by publication is complete when made in the manner and for the time prescribed in this Article. Service by publication shall be proved by the affidavit of any person having knowledge of the publication with a copy of the published notice attached. No default judgment may be entered on such service until proof of service by publication is filed with and approved by the Court. [TCR 86-109]

2-310 Entry of default on party served by publication. Before entry of a default judgment or order against a party who has been served solely by publication under this Article, the Court shall conduct an inquiry to determine whether the plaintiff, or someone acting in his/her behalf, made a distinct and meaningful search of all reasonably available sources to ascertain the whereabouts of any named parties who have been served solely by publication under this Section. Before entry of a default judgment or order against the unknown successors of a named defendant, a named decedent, or a dissolved partnership, corporation, or association, the Court shall conduct an inquiry to ascertain whether the requirements described in subsection (1) of Section 2-306 of this Article have been satisfied. [TCR 86-109, 94-07]

2-311 Vacating default judgments where service is by publication.

1. A party against whom a default judgment or order has been rendered, without other service than by publication in a newspaper, may, at any time within three years after the date of the judgment or order, have the judgment or order opened and be let in to defend.
2. Before the judgment or order is opened, the applicant shall notify the adverse party of his/her intention to make such challenge, and shall:
   A. File a full answer to the petition;
   B. Pay all costs if the Court requires them to be paid; and
   C. Satisfy the Court by affidavit or other evidence that during the pendency of the action he/she had no actual notice thereof in time to appear in Court and make his/her defense.
3. The title to any property which is the subject of a default judgment and which passed to a purchaser in good faith by or in consequence of the judgment or order to be opened shall not be affected by any proceedings under this Section. Nor shall proceedings under this Section affect the title of any property sold before judgment under an attachment.
4. The adverse party, on the hearing of any application to open a judgment or order as provided by this Section, shall be allowed to present evidence to show that during the pendency of the action the applicant had notice thereof in time to appear in Court and make his/her defense. [TCR 86-109, 94-07]

2-312 Certain technical errors not grounds for vacating judgment.

1. No judgment heretofore or hereafter rendered in any action against unknown heirs or devisees of a deceased person shall ever be construed, or held to be, either void or voidable upon the ground that an affidavit of the plaintiff to the effect that the name of heirs or devisees, or any of them, and their residences are unknown to the plaintiff, was not annexed to his/her complaint so long as said affidavit is on file in the action, and all such judgments, if not otherwise void, are hereby declared to be valid and binding from the date of rendition.
2. No judgment heretofore or hereafter rendered in any action against any person or party served by publication shall be construed or held to be void or voidable because the affidavit for such service by publication on file in the action was made by the attorney for the plaintiff or because the complaint or other pleading was verified, if verification is necessary, by the attorney for the plaintiff or party seeking such service by publication. In all such cases it shall be conclusively presumed, if otherwise sufficient, that the allegations and statements made by such an attorney

were and are in legal effect and for all purposes made by plaintiff and shall have the same force and effect as if actually made by the plaintiff.

3. All such judgments, if not otherwise defective or void, are hereby declared valid and legally effective and conclusive as of the date thereof as if such affidavit was made or the complaint or pleading was verified by the plaintiff or other party obtaining such service by publication. [TCR 86-109]

2-313 Meaning of "successors" for publication purposes. The term "successors" includes all heirs, executors, administrators, devisees, trustees, and assigns, immediate and remote, of a named individual, partnership, corporation, or association. [TCR 86-109]

2-314 Minimum contacts required for effective long arm service. Service outside of the Tribal jurisdiction does not give the Court in persona jurisdiction over a defendant who is not subject to the jurisdiction of the Courts of this Tribe, or who has not, either in person or through an agent, submitted him/herself to the jurisdiction of the Courts of this Tribe either by appearance, written consent, or having voluntarily entered into sufficient contacts with the Tribe, its members, or its territory to justify Tribal jurisdiction over him/her in accordance with the principals of due process of law and federal Indian law. [TCR 86-109]

2-315 Consent is effective substitute for service. If service cannot be made by personal delivery or by mail, a defendant of any class referred to in subsection (1) or (3) of Section 2-317 of this Article may be served as provided by Court order in any manner which is reasonably calculated to give him/her actual notice of the proceedings and an opportunity to be heard. The Court may enter an order requiring such service whenever service has been by publication only prior to entering a default judgment.

2-316 Service pursuant to Court order. If service cannot be made by personal delivery or by mail, a defendant of any class referred to in subsection (1) or (3) of Section 2-317 of this chapter may be served as provided by Court order in any manner which is reasonably calculated to give him/her actual notice of the proceedings and an opportunity to be heard. The Court may enter an order requiring such service whenever service has been by publication only prior to entering a default judgment.

2-317 Summons and complaint; person to be served. The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. These provisions are not jurisdictional, but if the failure to comply with them prejudices the party served, the Court may extend the time to answer. Service shall be made as follows:

1. Upon an individual other than an infant or incompetent person, by delivering a copy of the summons and a copy of the complaint to him/her personally or by leaving copies thereof at his/her dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.
2. Upon an infant or an incompetent person, by serving the summons and complaint to either parent, the legal guardian of the infant or incompetent person, if any, or the person with whom the infant resides if the infant is under the age of fourteen years, or upon the person with whom the incompetent person resides. If the infant is over the age of fourteen years, by serving either parent or the legal guardian of the infant, if any, or the person with whom the infant resides and by serving the infant personally if the legal guardian cannot be located.
3. Upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and of the

complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant. Service may also be had upon such entities by delivering the summons and complaint to a place of business of such entity and leaving a copy with the person in charge of that place of business at the time service is made.

4. Upon the United States, by delivering a copy of the summons and of the complaint to the United States attorney for the district in which the action is brought or to an assistant United States attorney or clerical employee designated by the United States attorney in a writing filed with the clerk for the Court and by sending a copy of the summons and of the complaint by registered or certified mail to the attorney general of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or agency of the United States not made a party, by also sending a copy of the summons and of the complaint by registered or certified mail to such officer or agency.
5. Upon any officer or agency of the United States, by serving the United States and by sending a copy of the summons and of the complaint by registered or certified mail to such office or agency. If the agency is a corporation the copy shall be delivered as provided in subsection (3) of this Section.
6. Upon a state, a state municipal corporation, or any other Indian tribe not a party to this Act, or other governmental organization thereof subject to suit, by delivering a copy of the summons and of the complaint to the chief executive officer thereof or by serving the summons and complaint in the manner prescribed by the law of that state or Tribe for the service of summons or other like process upon any such defendant.
7. Upon this Tribe by delivering a copy of the summons and of the complaint to the chief executive officer of the Tribe, and to the Tribal Chairman in a writing filed with the clerk of the Tribal Court, and by sending a copy of the summons and of the complaint by registered or certified mail, return receipt requested, to the Tribal attorney and in any action attacking the validity of an order of an officer or agency of the Tribe not made a party, by also sending a copy of the summons and complaint by registered or certified mail, return receipt requested, to such officer or agency. The name and address of the Tribal attorney may always be obtained from the Bureau of Indian Affairs, or the chief executive officer of the Tribe.
8. Upon any officer or agency of this Tribe by serving the Tribe as provided by subsection (7) of this Section, and by delivering a copy of the summons and of the complaint to such officer or agency. If the agency is a corporation, the copy shall be delivered as provided in subsection (3) of this Section. [TCR 86-109, 94-07, 94-25]

2-317.1 Effect of service of some of several defendants.

1. Where the action is against two or more defendants, and one or more shall be served, but not all of them, the plaintiff may proceed as follows:
   A. If the action be against defendants jointly indebted upon contract, tort, or any other cause of action, he/she may proceed against the defendants served, unless the Court otherwise orders; and if he/she recovers judgment, it may be entered against; (i) all the defendants thus jointly indebted only insofar as the judgment may be enforced against the joint property of all, and (ii) against the defendants served insofar as the judgment may be enforced against the separate property of the defendants served, and if they are subject to arrest, against the persons of the defendants served.

B. If the action be against defendants severally liable, he/she may, without prejudice to his/her rights against those not served, proceed against the defendants served in the same manner as if they were the only defendants.

2. A judgment against one or more defendants served, whether jointly or severally liable, shall not be construed to make such judgment a bar to another action against those not served. [TCR 86-109]

2-318 Service upon party not inhabitant of or found within the territorial limits of the reservation.

1. Whenever an ordinance of the Tribe or an order of the Court of the Tribe provides for service of summons, or of a notice, or of an order in lieu of summons upon a party not an inhabitant of or found within the geographical boundaries of the Tribal reservation, service may be made under the circumstances and in the manner prescribed by the ordinance or order, or, if there is no provision therein prescribing the manner of service, in a manner stated in this Act.
2. In any action against a foreign corporation or association where service is authorized by Tribal law upon a Tribal officer, and the party seeking service elects to serve the Tribal officer, service shall be made as follows:
   A. The Tribal Court clerk shall issue a summons and shall forthwith mail or personally serve triplicate copies of said summons, together with a copy of the complaint and the service fee to the Tribal officer. The Court clerk shall make due return, indicating that the summons and complaint copies have been delivered to the Tribal officer and the date of such delivery. Receipt of the summons and complaint by the Tribal officer shall constitute service upon him/her. Within three working days after service upon him/her, the Tribal officer shall send copies of the summons and complaint to such foreign corporation or association, by registered or certified mail, return receipt requested, at its office as shown by the articles of incorporation, or charter, or by the latest information officially filed in the office of the Tribal officer. The summons shall set forth the last-known address of the office of the corporation or association as ascertained by the parties by use of due diligence, and the Tribal officer shall mail copies of the summons and complaint to the corporation or association at this address. The Tribal officer shall maintain one copy of the summons and complaint with the records of the corporation or association.
   B. The original summons that is served on the Tribal officer shall be in form and substance the same as provided in suits against residents of the Tribal jurisdiction. The summons shall state an answer date which shall be not less than forty five days nor more than sixty days from the date that such summons was issued. [TCR 86-109, 94-07]

2-319 Territorial limits of effective service.

1. All process, other than subpoena or process involving the detention, seizure, or arrest of persons or property, may be served anywhere within the reservation boundaries, or any Indian country, as defined by 18 U.S.C. 1151, which is subject to the jurisdiction of the Tribe and, when authorized by an ordinance or statute of the Tribe or by this Act, beyond these territorial limits.
2. In addition, persons who are brought in as parties pursuant to Section 2-217 of this Act, or as additional parties to a pending action or a counterclaim or cross-claim therein pursuant to Section 2-403, may be served in the manner stated in subsections 1-6 of Section 2-317 of this Act at all places outside the reservation of the Tribe but within the United States, and persons required to respond to an order of commitment for civil contempt may be served, but not arrested, at the same places.
3. A subpoena or process involving the detention, seizure, or arrest of persons or property, may be served and compulsorily enforced only within the Indian country, as defined by 18 U.S.C. 1151,

which is subject to the jurisdiction of the Tribe. A subpoena or other process involving the detention, seizure or arrest of a person or property may be served anywhere within the United States, but no compulsory enforcement thereof may be maintained in this Court unless such person or property is located within the Indian country of the Tribe when service is made.

4. When the exercise of jurisdiction is authorized by Tribal or federal law, service of the summons and complaint may be made outside this reservation:
   A. By personal delivery in the manner prescribed for service within this reservation.
   B. In the manner prescribed by the law of the place in which the service is made for service in that place in an action in any of its Courts of general jurisdiction.
   C. By publication, in appropriate circumstances.
   D. As directed by the foreign authority in response to a letter rogatory, or
   E. As directed by the Court. [TCR 86-109, 93-84]

2-320 Return of service of process.

1. The person serving the process shall make proof of service thereof to the Court promptly and in any event within the time during which the person served must respond to the process. If service is made by a person other than a Tribal police officer, a Bureau of Indian Affairs police officer or their deputy, or an attorney by mail, he/she shall make affidavit thereof. Return of receipt for certified or registered mail shall be attached to the proof of service if service was made by mail. A copy of each publication of notice shall be attached to the return of service by publication. Failure to make proof of service does not affect the validity of the service.
2. The person serving the summons shall state on the copy that is left with the party served, as well as on the return, the date that service is made. Where service is to be made by mail, the person mailing the summons shall state on the copy that is mailed to the party to be served the date of mailing. These provisions are not jurisdictional, but if the failure to comply with them prejudices the party served, the Court may extend the time to answer. [TCR 86-109, 94-07]

2-321 Alternative provisions for service in a foreign country.

1. Manner. When the law of the Tribe referred to in Section 2-318 of this Article authorizes service upon a party not an inhabitant of or found within the territorial limits of effective service of the Tribal Court, and when service is to be effected upon the party in a foreign country, it is also sufficient if service of the summons and complaint is made: (A) in the manner prescribed by the law of the Tribe, state, or foreign country for service in that Tribe, state, or country in an action in any of its Courts of general jurisdiction; or (B) as directed by the foreign authority in response to a letter rogatory when service in either case is reasonably calculated to give actual notice; or (C) upon an individual, by delivery to him/her personally, and upon a corporation or partnership or association, by delivery to an officer, a managing or general agent; or (D) by any form of mail, requiring a signed receipt, to be addressed and as directed by the order of the Court. Service under (C) or (D) above may be made by any person who is not a party and is not less than eighteen years of age or who is designated by order of the Tribal Court or by the foreign Court. On request, the clerk shall deliver the summons to the plaintiff for transmission to the person or the foreign Court or officer or who will make the service.
2. Return. Proof of service may be made as prescribed by Section 2-320 of this Article, or by the law of the Tribe, state or foreign country, or by order of this Court. When service is made by mail pursuant to subsection (1) of this Section, proof of service shall include a receipt signed by the addressee or other evidence of the delivery to the address satisfactory to the Court. [TCR 86-109, 94-07]

2-322 Subpoena.

1. For attendance of witnesses; form; issuance. Every subpoena shall issued by the clerk under the seal of the Court, shall state the name of the Court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. The clerk shall issue a subpoena for the production of documentary or other physical evidence signed and sealed, but otherwise in blank, to a party requesting it, who shall fill it in before service.
2. Production of documentary evidence. A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein; but the Court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith may (A) quash or modify the subpoena if it is unreasonable and oppressive or (B) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.
3. Service. A subpoena may be served by a Tribal police officer, a Bureau of Indian Affairs police officer, or by any other person authorized by the Court or by this Act who is not a party and is not less than eighteen years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tending to him/her the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the Tribe or an officer or agency thereof, fees and mileage need not be tendered, but fees paid shall be charged to such Tribal officer or agency budget. A subpoena may be served as provided in Section 2-304 if accepted by the addressee. All subpoena service expenses may be recovered as other costs.
4. Subpoena for taking depositions; place of examination.
   A. Proof of service of a notice to take a deposition as provided in Sections 2-505(2) and 2-506(1) or presentation of prepared notices to be attached to the subpoena constitutes a sufficient authorization for the issuance by the clerk of the Tribal Court of subpoenas for the persons named or described therein. The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute or contain matters within the scope of the examination permitted by Section 2-501(2), but in that event the subpoena will be subject to the provisions of Section 2-501(3) and subdivision (2) of this Section. The person to whom the subpoena is directed may, within ten days after the service thereof or on or before the time specified in the subpoena for compliance, if such time is less than ten days after service, serve upon the attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials. If objection is made, any party serving the subpoena shall not be entitled to inspect and copy the materials except pursuant to an order of the Court from which the subpoena was issued. The party serving the subpoena may, if objection has been made, move upon notice to the deponent for an order at any time before or during the taking of the deposition.
   B. A resident of the Tribal jurisdiction may be required to attend an examination at any place within the exterior boundaries of the reservation as defined in Section 2-105(4) of this Act.
5. Subpoena for hearing or trial.
   A. At the request of any party, subpoenas for attendance at a hearing or trial shall be issued by the clerk of the Tribal Court. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the Tribal jurisdiction, or at any place without the Tribal jurisdiction that is within one hundred miles of the place of the hearing or trial specified in the subpoena; and, when a statute of the Tribe provides therefor, the

Court upon proper application and cause shown may authorize the service of a subpoena at any other place.

B. A subpoena directed to a witness in a foreign country shall issue under the circumstances and in the manner and be served as may be provided by any Tribal statute.

6. Contempt. Failure by any person without adequate excuse to obey a subpoena served upon him/her within the Tribal jurisdiction may be deemed a contempt of the Tribal Court. [TCR 86-109, 94-07, 94-27]

2-330 Summons; time limit for service.

1. If service of process is not made upon a defendant within one hundred twenty days after the filing of the complaint and the plaintiff cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the Court's own initiative with notice to the plaintiff or upon motion.
2. If service of process is not made upon a defendant within one hundred eighty days after the filing of the complaint, the action shall be deemed to have been dismissed without prejudice as to that defendant. This Section shall not apply to service in a foreign country. [TCR 86-109]

2-331 Service and filing of pleadings and other papers.

1. Service: when required. Except as otherwise provided in this Act, every order required by its terms to be served, every pleading subsequent to the original complaint unless the Court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the Court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except the pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons. In an action begun by seizure of property, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim, or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.
2. Service: how made. Whenever service is required or permitted to be made upon a party represented by an attorney (including any person licensed to practice law before the Tribal Court) the service shall be made upon the attorney unless service upon the party him/herself is ordered by the Court. Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party or by mailing it to the attorney or party at the attorney or party's last known address or, if no address is known, by leaving it with the clerk of the Court who shall mail a copy thereof to the party's last address of record. Delivery of a copy within this Section means: handing it to the attorney or to the party, or leaving it at an office with his/her clerk, or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person fifteen years of age or older then residing therein. Service by mail is complete upon mailing.
3. Service: numerous defendants. In any action in which there are an unusually large number of defendants, the Court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such

pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the Court directs.

4. Filing. All papers after the complaint required to be served upon a party together with a certificate of service, shall be filed with the Court within a reasonable time after service, but the Court may on motion of a party or on its own initiative order that depositions upon oral examination and interrogatories, requests for documents, requests for admission, and answers and responses thereto not be filed unless on order of the Court or for use in the proceeding.
5. Filing with the Court defined. The filing of pleadings and other papers with the Court as required by this Article shall be made by filing them with the clerk of the Court except that the judge may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. [TCR 86-109, 94-07]

2-340 Time.

1. Computation. In computing any period of time prescribed or allowed by this Act, by order of the Court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or any other day when the office of the clerk of the Court does not remain open for public business until 4:30 p.m. in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday or when the act to be done is the filing of a paper in Court, a day on which weather or other conditions have made the office of the clerk of the Court inaccessible or any other day when the office of the clerk of the Court does remain open for public business until 4:30 p.m. When the period of time prescribed or allowed is less than or equal to seven days, intermediate Saturdays, Sundays, and legal holidays or any other day when the office of the clerk of the Court does not remain open for public business until 4:30 p.m. shall be excluded in the computation. As used in this Section and in the provisions relating to the Court, "legal holiday" includes New Year's Day, Tribal Constitution Anniversary Day (being February 28), Memorial Day, Independence Day, the Monday after the Winnebago Pow-Wow, Labor Day, Native American Day (being the fourth Monday in September), Tribal Election Day (being the first Tuesday after the first Monday in October), Veterans Day, and any other day appointed as a holiday by the President or the Congress of the United States or by the Tribe.
2. Enlargement. When by this Act or by a notice given thereunder or by order of the Court an act is required or allowed to be done at or within a specified time, the Court for cause shown at any time in its discretion may (A) with or without motion or notice order the period enlarged if request thereof is made before the expiration of the period originally prescribed or as extended by a previous order, or (B) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Sections 2-857(2), 2-852(3), (4) and (5), and Section 2-1009(2), except to the extent and under the conditions stated in them.
3. For motions-—affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than five days before the time specified for the hearing, unless a different period is fixed by this Act or by order of the Court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Section 2-1008(3), opposing affidavits may be served not later than one day before the hearing, unless the Court permits them to be served at some other time.
4. Additional time after service by mail. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper

upon the party and the notice or paper is served upon the party by mail, three days shall be added to the prescribed period. [TCR 86-109, 94-07]

2-341 General cases in which extraterritorial service authorized. Service of summons and complaint, third-party complaints, and other process by which an action is instigated may be made outside the territorial limits described in Section 2-319 in the following cases in addition to any circumstances specifically or otherwise provided for:

1. In all actions arising under the Tribal juvenile statutes or the Indian Child Welfare Act;
2. In all divorce actions when one of the parties is a resident of the Tribal jurisdiction or a member of the Tribe;
3. In all actions arising in contract where the contract was entered into, or some material portion thereof was to be performed, within the Tribal jurisdiction; or
4. In all actions arising out of the negligent operation of an automobile within the Tribal jurisdiction by a non-resident when an injury to person or property resulted within the Tribal jurisdiction from the negligent operation of the motor vehicle. [TCR 86-109]

2-342 Legal newspaper. All newspapers regularly published at least once each week for a period of two years prior to the date of publication of a notice within the reservation or in any county adjacent thereto, and the Tribal newspaper shall be legal newspapers for the publication of any notice required to be published by Tribal law. [TCR 86-109]

TITLE 2
ARTICLE 4
PARTIES

2-401 Parties plaintiff and defendant: capacity.
2-402 Joinder of claims, remedies, and actions.
2-403 Joinder of persons needed for just adjudication.
2-404 Permissive joinder of parties.
2-405 Misjoinder and non-joinder of parties.
2-406 Interpleader.
2-407 Class actions.
2-408 Derivative actions by shareholders and members.
2-409 Intervention.
2-410 Substitution of parties.

2-401 Parties plaintiff and defendant: capacity.

1. Real party in interest. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought; and when a statute of the Tribe so provides, an action for the use or benefit of another shall be brought in the name of the Tribe. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.
2. Capacity to sue or be sued. Except as otherwise provided by law, every person, corporation, partnership, or incorporated association shall have the capacity to sue or be sued in its own name in the Courts of the Tribe, and service may be had upon unincorporated associations and partnership as provided in Section 2-317(3) of this Act, upon a managing or general partner, or upon an officer of an unincorporated association.
3. Infants or incompetent persons. Whenever an infant or incompetent person has a representative, such as a general guardian, committee, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person. An infant or incompetent person who does not have a duly appointed representative may sue by next friend or by a guardian ad litem. The Court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person.
4. Assignment of tort claims prohibited. Claims arising in tort may not be assigned and must be brought by the injured party, provided, that this subsection shall not preclude subrogation of the proceeds of such tort claims for the benefit of any person, including insurance companies, who have compensated the injured party for their injuries, including property damage, to the extent of the payment made by the third party.
5. Definitions. Abrogated. [TCR 86-109, 94-07]

2-402 Joinder of claims, remedies, and actions.

1. Joinder of claims. A party asserting a claim for relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims, legal or equitable as the party may have against an opposing party.

2. Joinder of remedies: fraudulent conveyances. Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the Court shall grant relief in that action only in accordance with the relative substantive rights of the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to that plaintiff, without first having obtained a judgment establishing the claim for money.
3. Joinder of actions by the Court. Abrogated. [TCR 86-109, 94-07]

2-403 Joinder of persons needed for just adjudication.

1. Persons to be joined if feasible. A person who is subject to service of process and whose joinder will not deprive the Court of jurisdiction over the subject matter of the action shall be joined as a party in the action if:
   A. In the person's absence complete relief cannot be accorded among those already parties.
   B. The person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may:
      i. as a practical matter impair or impede the person's ability to protect that interest or
      ii. leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.

   If the person has not been so joined, the Court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or in a proper case, an involuntary plaintiff.
2. Determination by Court whenever joinder not feasible. If a person as described in subdivision (1)(A)-(B) hereof cannot be made a party, the Court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the Court in making such determination include:
   A. First, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties;
   B. Second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided;
   C. Third, whether a judgment rendered in the person's absence will be adequate; and
   D. Fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for non-joinder.
3. Pleading reasons for non-joinder. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any person as described in subdivision (a)(1)-(2) hereof who are not joined, and the reasons why they are not joined.
4. Exception of class actions This Section is subject to the provisions of Section 2-407. [TCR 86-109, 94-07]

2-404 Permissive joinder of parties.

1. Permissive joinder.
   A. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences, and if any question of law or fact common to all these persons will arise in the action.

B. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences, and if any question of law or fact common to all defendants will arise in the action, or if the claims are connected with the subject matter of the action.

C. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

2. Abrogated.

3. Separate Trials. The Court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom the party asserts no claim, or who asserts no claim against the party, and may order separate trials or make other orders to prevent delay or prejudice. [TCR 86-109, 94-07]

2-405 Misjoinder and non-joinder of parties. Misjoinder of parties is not ground for dismissal of an action. Leave of the Court shall not be required when the pleader amends his/her pleadings within the time period for amendment of pleadings without leave of the Court specified in Section 2-215(1). Any claim against a party may be severed and proceeded with separately upon order of the Court. [TCR 86-109, 94-07]

2-406 Interpleader.

1. Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that the plaintiff is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this Section supplement and do not in any way limit the joinder of parties permitted in Section 2-404.

2. The provisions of this Section shall be applicable to actions brought against a Tribal policeman or other officer for the recovery of personal property taken by him/her under execution or for the proceeds of such property so taken and sold by him/her; and the defendant in any such action shall be entitled to the benefit of this Section against the party in whose favor the execution issued.

3. The Court may make an order for the safekeeping of the subject of the action or for its payment or delivery into the Court or to such person as the Court may direct, and the Court may order the person who is seeking relief by way of interpleader to give a bond, payable to the clerk of the Court, in such amount and with such surety as the Court or judge may deem proper, conditioned upon the compliance with the future order or judgment of the Court with respect to the subject matter of the controversy. Where the party seeking relief by way of interpleader claims no interest in the subject of the action and the subject of the action has been deposited with the Court or with a person designated by the Court, the Court should discharge him/her from the action and from liability as to the claims of the other parties to the action with costs and, in the discretion of the Court, a reasonable attorney fees.

4. In cases of interpleader, costs may be adjudged for or against any party, except as provided in subsection (3) of this Section. [TCR 86-109, 94-07]

2-407 Class actions.

1. Prerequisites to a class action. One or more members of a class may sue or be sued as representative parties on behalf of all only if: (A) the class is so numerous that joinder of all members is impracticable, (B) there are questions of law or fact common to the class, (C) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (D) the representative parties will fairly and adequately protect the interests of the class.
2. Class actions maintainable An action may be maintained as a class action of the prerequisites of subsection (1) are satisfied and in addition:
   A. The prosecution of separate actions by or against individual members of the class would create a risk of:
      i. Inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; or
      ii. Adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.
   B. The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.
   C. The Court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (i) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (ii) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (iii) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (iv) the difficulties likely to be encountered in the management of a class action.
3. Determination by order whether class action to be maintained; notice; judgment; actions conducted partially as class actions.
   A. As soon as practicable after the commencement of an action brought as a class action, the Court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits.
   B. In any class action maintained under subdivision (2)(C), the Court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that (i) the Court will exclude the member from the class if the member so requests by a specified date; (ii) the judgment, whether favorable or not, will include all members who do not request exclusion; and (iii) any member who does not request exclusion may, if the member desires, enter an appearance through counsel.
   C. The judgment in an action maintained as a class action under subdivision (2)(A) or (2)(B), whether or not favorable to the class, shall include and describe those whom the Court finds to be members of the class. The judgment in an action maintained as a class action under subdivision (2)(C), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subdivision (3)(B) was directed, and who have not requested exclusion, and whom the Court finds to be members of the class.

D. When appropriate (i) an action may be brought or maintained as a class action with respect to particular issues, or (ii) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this Section shall then be construed and applied accordingly.

E. Abrogated.

4. Orders in conduct or actions. In the conduct of actions to which this Section applies, the Court may make appropriate orders:

A. Determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;

B. Requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the Court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action;

C. Imposing conditions on the representative parties or on intervenors;

D. Requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly;

E. Dealing with similar procedural matters.

The orders may be combined with an order under Section 2-219, and may be altered or amended as may be desirable from time to time.

5. Dismissal or compromise. A class action shall not be dismissed or compromised without the approval of the Court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the Court directs. [TCR 86-109, 94-07]

2-408 Derivative actions by shareholders and members.

1. In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege:

A. That the plaintiff was a shareholder or member at the time of the transaction of which the plaintiff complains or that the plaintiff's share or membership thereafter devolved on the plaintiff by operation of law.

B. That the action is not a collusive one to confer jurisdiction on a Court of the Tribe which it would not otherwise have. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action the plaintiff desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for the plaintiff's failure to obtain the action or for not making the effort.

2. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the approval of the Court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the Court directs. The Court shall not take jurisdiction over such actions concerning the internal affairs of corporations or other entities formally organized under the law of some other jurisdiction absent the consent of all parties to the controversy or some compelling reason to assume such jurisdiction.

3. An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its

members. In the conduct of the action, the Court may make appropriate orders corresponding with those described in Section 2-407(4) and the procedure for dismissal or compromise of the action shall correspond with that provided in Section 2-407. [TCR 86-109, 94-07]

2-409 Intervention.

1. Intervention of right. Upon timely application anyone shall be permitted to intervene in an action: (A) when a statute of the Tribe confers an unconditional right to intervene; or (B) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.
2. Permissive intervention. Upon timely application anyone may be permitted to intervene in an action when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a Tribal, federal or state governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion, the Court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.
3. Procedure. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Section 2-331. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. If the motion to intervene is granted, all other parties may serve a responsive pleading upon leave of the Court.
4. Intervention by the Tribe. In any action, suit, or proceeding to which the Tribe or any agency, officer, or employee thereof is not a party in their official capacity, wherein the constitutionality or enforceability of any statute of the Tribe affecting the public interest is drawn in question the parties, and upon their failure to do so, the Court shall certify such fact to the chief executive officer of the Tribe, the Tribal attorney, and the Tribal legislative body and the Court shall permit the Tribe to intervene for presentation of evidence, if the evidence is otherwise admissible in the case, and for argument on the question of constitutionality or enforceability. The Tribe shall, subject to the applicable provisions of law, have all the rights of a party, and be subject to the liability of a party—as to Court costs only—to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality or enforceability of the Tribal laws at issue. It shall be the duty of the party raising such issue to promptly give notice thereof to the Court either orally upon the record in open Court or by a separate written notice filed with the Court and served upon all parties, and to state in said notice when and how notice of the pending question will be or has been certified to the Tribe as provided above. [TCR 86-109, 94-07]

2-410 Substitution of parties.

1. Death. If a party dies, the Court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Section 2-331 and upon persons not parties in the manner provided for the service of a summons, and may be served within or without the Tribal jurisdiction. Unless the motion for substitution is made not later than ninety days after the death is suggested upon the record, the action shall be dismissed as to the deceased party.

A. In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

B. Actions for libel, slander, and malicious prosecution shall abate at the death of the defendant.

C. Other actions, including actions for wrongful death, shall survive the death of a party.

2. Incompetency. If a party becomes incompetent, the Court upon motion served as provided in subdivision (1) of this Section may allow the action to be continued by or against his/her representative.

3. Transfer of interest. In case of any transfer of interest, the action may be continued by or against the original party, unless the Court upon motion directs the person to whom the interest transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subdivision (1) of this Section.

4. Public officers; death or separation from office.

A. When a public officer is a party to an action in his/her official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and his/her successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

B. When a public officer sues or is sued in his/her official capacity, he/she may be described as a party by his/her official title rather than by name but the Court may require his/her name to be added. [TCR 86-109, 94-07]

TITLE 2
ARTICLE 5
DEPOSITIONS AND DISCOVERY

2-501 General provisions governing discovery.
2-502 Depositions before action or pending appeal.
2-503 Persons before whom depositions may be taken.
2-504 Stipulations regarding discovery procedure.
2-505 Depositions upon oral examination.
2-506 Depositions upon written questions.
2-507 Use of depositions in Court proceedings.
2-508 Interrogatories to parties.
2-509 Production of documents and things and entry upon land for inspection and other purposes.
2-510 Physical and mental examination of persons.
2-511 Requests for admission.
2-512 Failure to make or cooperate in discovery: sanctions.

2-501 General provisions governing discovery.

1. Discovery methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property for inspection and other purposes; physical and mental examinations; and requests for admission. Unless the Court orders otherwise under subdivision (3) of this Section, the frequency of use of these methods is not limited. Discovery may be obtained as provided herein in aid of execution upon a judgment.
2. Scope of discovery. Unless otherwise limited by order of the Court in accordance with this Article, the scope of discovery is as follows:
   A. In general. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.
   B. Insurance agreements. A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.
   C. Trial preparation: materials. Subject to the provisions of subdivision (2)(D) of this Section, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (2)(A) of this Section and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of

such materials when the required showing has been made, the Court shall protect against disclosure of the mental impressions, conclusions, opinions or legal theories of an attorney or other representative of a party concerning the litigation. A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a Court order. The provisions of Section 2-512(1)(D) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (i) a written statement signed or otherwise adopted or approved by the person making it, or (ii) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

D. Trial preparation: experts. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (2)(A) of this Section and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

i. (a) A party may, through interrogatories, require any other party to identify each person whom the other party expects to call as an expert witness at a trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. (b) Upon motion, the Court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivision (2)(D)(iii) of this Section, concerning fees and expenses as the Court may deem appropriate.

ii. A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Section 2-510(2) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

iii. Unless manifest injustice would result, (a) the Court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions (2)(D)(i)(b) and (2)(D)(ii) of this Section; and (b) with respect to discovery obtained under subdivision (2)(D)(ii) of this Section, the Court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

3. Protective orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the Court in which the action is pending or alternatively, on matters relating to a deposition, the Court in the jurisdiction where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (A) that the discovery not be had; (B) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (C) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (D) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (E) that discovery be conducted with no one present except persons designated by the Court; (F) that a deposition after being sealed be opened only by order of the Court; (G) that a trade secret or other confidential

research development, or commercial information not be disclosed or be disclosed only in a designated way; (H) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the Court. If the motion for a protective order is denied in whole or in part, the Court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Section 2-512(1)(D) apply to award of expenses incurred in relation to the motion.

4. Sequence and timing of discovery. Unless the Court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

5. Supplementation of responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the response to include information thereafter acquired, except as follows:
   - A. A party is under a duty seasonably to supplement the response with respect to any question directly addressed to (i) the identity and location of persons having knowledge of discoverable matters, and (ii) the identity of each person expected to be called as an expert witness at a trial, the subject matter on which the person is expected to testify, and the substance of the person's testimony.
   - B. A party is under a duty seasonably to amend a prior response if the party obtains information upon the basis of which (i) the party knows that the response was incorrect when made, or (ii) the party knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.
   - C. A duty to supplement responses may be imposed by order of the Court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

6. Discovery conference. At any time after commencement of an action, the Court may direct the attorneys for the parties to appear before it for a conference on the subject of discovery. The Court shall do so upon motion by the attorney for any party if the motion includes:
   - A. A statement of the issues as they then appear;
   - B. A proposed plan and schedule of discovery;
   - C. Any limitations proposed to be placed on discovery;
   - D. Any other proposed orders with respect to discovery; and
   - E. A statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion. Each party and each party's attorney are under a duty to participate in good faith in the framing of a discovery plan if a plan is proposed by the attorney for any party. Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the motion shall be served no later than ten days after service of the motion. Following the discovery conference, the Court shall enter an order tentatively identifying the issues for discovery purposes, establishing a plan and schedule for discovery, setting limitations on discovery, if any; and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. An order may be altered or amended whenever justice so requires. Subject to the right of the party who properly moves for a discovery conference to prompt convening of the conference, the Court may combine the discovery conference with a pretrial conference authorized by Section 2-219.

7. Signing of discovery requests, responses, and objections. Every request for discovery or response or objection thereto made by a party represented by an attorney shall be signed by at least one

attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the request, response, or objection and state the party's address. The signature of the attorney or party constitutes a certification that the signer has read the request, response, or objection, and that to the best of the signer's knowledge, information, and belief formed after a reasonable inquiry it is: (A) consistent with this Act and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (B) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (C) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed. If a certification is made in violation of this Section, the Court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party upon whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee. [TCR 86-109, 94-07]

2-502 Depositions before action or pending appeal.

1. Before action.

   A. Petition. A person who desires to perpetuate testimony regarding any matter that may be cognizable in Tribal Court may file a verified petition in the Tribal Court if the Tribal jurisdiction is the residence of any expected adverse party. The petition shall be entitled in the name of the petitioner and shall show: (i) that the petitioner expects to be a party to an action cognizable in the Tribal Court but is presently unable to bring it or cause it to be brought; (ii) the subject matter of the expected action and the petitioner's interest therein; (iii) the facts which the petitioner desires to establish by the proposed testimony and the petitioner's reasons for desiring to perpetuate it; (iv) the names or description of the persons the petitioner expects will be adverse parties and their addresses so far as known; and (v) the names and addresses of the persons to be examined and the substance of the testimony which the petitioner expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

   B. Notice and service. The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the Court, at a time and place named therein, for the order described in the petition. At least twenty days before the date of hearing the notice shall be served either within or without the Tribal jurisdiction in the manner provided in Section 2-317 for service of summons. If personal service cannot with due diligence be made upon any expected adverse party named in the petition, the Court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not served in the manner provided in Section 2-317(4) an attorney or advocate who shall represent them, and, in case they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent, the provisions of Section 2-401(3) apply. Any attorney appointed pursuant to this Section shall be compensated as provided by the Court from the Court fund, such compensation to be taxed as costs against the person perpetuating the testimony.

C. Order and examination. If the Court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatives. The depositions may then be taken in accordance with this Article and the Court may make orders of the character provided for by Sections 2-509 and 2-510.

D. Use of deposition. If a deposition to perpetuate testimony is taken under this Article or if, although not so taken, it would be admissible in evidence in the Courts of the jurisdiction in which it is taken, it may be used in any action involving the same subject matter subsequently brought in the Tribal Court, in accordance with the provisions of Section 2-507(1).

2. Pending appeal. If an appeal has been taken from a judgment of the Tribal Court or before the taking of an appeal if the time therefor has not expired, the Court may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the Tribal Court. In such case, the party who desires to perpetuate the testimony may make a motion in the Tribal Court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the Tribal Court. The motion shall show (a) the names and addresses of persons to be examined and the substance of the testimony which he/she expects to elicit from each; (b) the reasons for perpetuating their testimony. If the Court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders of the character provided for by Sections 2-509 and 2-510, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these sections for depositions taken in actions pending in the District Court.

3. Perpetuation by action. This Section does not limit the power of a Court to entertain an action to perpetuate testimony. [TCR 86-109, 94-07]

2-503 Persons before whom depositions may be taken.

1. Within the Tribal jurisdiction. Within the jurisdiction of the Tribe, depositions shall be taken before an officer authorized to administer oaths by the laws of the Tribe, or of the place where the examination is held, or before a person appointed by the Court in which the action is pending. A person so appointed has power to administer oaths and take testimony. All parties shall be subject to these provisions anywhere within the reservation as defined in this Act. The term officer as used in Sections 2-505, 2-506 and 2-507 includes a person appointed by the Court or designated by the parties under Section 2-504.

2. Outside the Tribal jurisdiction. Outside the Tribal jurisdiction, depositions may be taken (A) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States; or (B) before a person commissioned by the Court, and a person so commissioned shall have the power by virtue of the commission to administer any necessary oath and take testimony; or (C) pursuant to a letter rogatory. A commission or a letter rogatory shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impractical or inconvenient; and both a commission and a letter rogatory may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter rogatory may be addressed "To the Appropriate Authority in (Name of Tribe, State, or Country)." Evidence obtained in response to a letter rogatory need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not

taken under oath or for any similar departure from the requirements for depositions taken within the Tribal jurisdiction under these sections.

3. Disqualification for interest. No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action. [TCR 86-109, 94-07]

2-504 Stipulations regarding discovery procedure. Unless the Court orders otherwise, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions; and (2) modify the procedures provided by this Article for other methods of discovery except that stipulations extending the time provided in Sections 2-508, 2-509, and 2-511 for responses to discovery may be made only with the approval of the Court. [TCR 86-109]

2-505 Depositions upon oral examination.

1. When depositions may be taken. After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of Court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of thirty days after service of the summons and complaint upon any defendant or service made by publication, except that leave is not required (A) if a defendant has served a notice of taking deposition or otherwise sought discovery; or (B) if special notice is given as provided in subdivision (2)(B) of this Section. The attendance of witnesses may be compelled by subpoena as provided in Section 2-322. The deposition of a person confined in prison may be taken only by leave of Court on such terms as the Court prescribes.
2. Notice of examination: general requirements; special notice; non-stenographic recording; production of documents and things; deposition of organization.
   A. A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.
   B. Leave of Court is not required for the taking of a deposition by plaintiff if the notice (i) states that the person to be examined is about to go out of the Tribal jurisdiction and outside the reservation, or is about to go out of the United States, or is bound on a voyage to sea, and will be unavailable for examination unless the person's deposition is taken before expiration of the thirty day period; and (ii) sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and the attorney's signature constitutes a certification by the attorney that to the best of the attorney's knowledge, information, and belief the statement and supporting facts are true. The sanctions provided by Section 2-211 are applicable to the certification. If a party shows that when the party was served with notice under this subdivision (2)(B) the party was unable through the exercise of due diligence to obtain counsel to represent the party at the taking of the deposition, the deposition may not be used against the party.
   C. The Court may for cause shown enlarge or shorten the time for taking the deposition.
   D. The parties shall stipulate in writing or the Court may upon motion order that the testimony at a deposition be recorded by other than stenographic means. The stipulation

or order shall designate the person before whom the deposition shall be taken, the manner of recording, preserving and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. A party may arrange to have a stenographic transcription made at the party's own expense. Any objections under subdivision (3), any changes made by the witness, the witness' signature identifying the deposition as the witness' own or the statement of the officer that is required if the witness does not sign, as provided in subdivision (5), and the certification of the officer required by subdivision (6) shall be set forth in a writing to accompany a deposition recorded by non-stenographic means.

E. The notice to a party deponent may be accompanied by a request made in compliance with Section 2-509 for the production of documents and tangible things at the taking of the deposition. The procedure of Section 2-509 shall apply to the request.

F. A party may, in the party's notice and in a subpoena, name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (2)(F)does not preclude taking a deposition by any other procedure authorized in these sections.

G. The parties may stipulate in writing or the Court may upon motion order that a deposition be taken by telephone. For the purposes of this Section and Sections 2-503(1), 2-512(1), 2-512(2)(A) and 2-322(4), a deposition taken by telephone is taken in the jurisdiction and at the place where the deponent is to answer questions propounded to the deponent.

3. Examination and cross-examination: record of examination; oath; objections. Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of the Winnebago Rules of Evidence. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with subdivision (2)(D) of this Section. If requested by one of the parties, the testimony shall be transcribed.

All objections made at time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and the party taking the deposition shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

4. Motion to terminate or limit examination. At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as to unreasonably annoy, embarrass, or oppress the deponent or party, the Tribal Court or the Court in the jurisdiction where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Section 2-501(3). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the Tribal Court. Upon demand of the objecting party or deponent, the taking of the deposition shall

be suspended for the time necessary to make a motion for an order. The provisions of Section 2-512(1)(D) apply to the award of expenses incurred in relation to the motion.

5. Submission to witness; changes; signing. When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by the witness, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within thirty days of its submission to the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Section 2-507(4)(D) the Court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

6. Certification and filing by officer; exhibits; copies; notice of filing.
   A. The officer shall certify on the deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. Unless otherwise ordered by the Court, the officer shall then securely seal the deposition in an envelope endorsed with the title of the action and marked "Deposition of [here insert name of witness]" and shall promptly file it with the Tribal Court or send it by registered or certified mail to the clerk thereof for filing. Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to the deposition, and may be inspected and copied by any party, except that if the person producing the materials desires to retain them the person may: (i) offer copies to be marked for identification and annexed to the deposition and to serve thereafter as originals if the person affords to all parties fair opportunity to verify the copies by comparison with the originals; or (ii) offer the originals to be marked for identification, after giving each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to with the deposition.
   B. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent. The Court may, by section, establish the maximum charges which are reasonable for such services.
   C. The party taking the deposition shall give prompt notice of its filing to all other parties.

7. Failure to attend or to serve subpoena; expenses.
   A. If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the Court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attendance, including reasonable attorney's fees.
   B. If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney because that party expects the deposition of that witness to be taken, the Court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attendance, including reasonable attorney's fees. [TCR 86-109, 94-07, 94-27]

2-506 Depositions upon written questions.

1. Serving questions; notice. After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in Section 2-322. The deposition of a person confined in prison may be taken only by leave of Court on such terms as the Court prescribes. A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating (A) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs; and (B) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association of governmental agency in accordance with the provisions of Section 2-505(2)(F). Within thirty days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within ten days after being served with cross questions, a party may serve redirect questions upon all other parties. Within ten days after being served with redirect questions, a party may serve re-cross questions upon all other parties. The Court may for cause shown enlarge or shorten the time.
2. Officer to take responses and prepare record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly in the manner provided by Section 2-505(3), (5), and (6), to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by the officer.
3. Notice of filing. When the deposition is filed the party taking it shall promptly give notice thereof to all other parties. [TCR 86-109, 94-07]

2-507 Use of depositions in Court proceedings.

1. Use of depositions. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:
   A. Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.
   B. The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Section 2-505(2)(F) or Section 2-507(1) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.
   C. The deposition of a witness, whether or not a party, may be used by any party for any purpose if the Court finds: (i) that the witness is dead; or (ii) that the witness is outside the jurisdiction of the Tribe, and cannot be served with a subpoena to testify at trial while within the Tribal jurisdiction unless it appears that the absence of the witness was procured by the party offering deposition; or (iii) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (iv) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (v) upon application and notice, that such exceptional circumstances exist as to make it

desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open Court to allow the deposition to be used.

D. If only part of the deposition is offered in evidence by a party, an adverse party may require the offerer to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts. Substitution of the parties pursuant to Section 2-410 does not affect the right to use depositions previously taken; and, when an action in any court of any Indian tribe, the United States, or any state has been dismissed and another action involving the same subject matter is afterward brought between the same parties, or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor. A deposition previously taken may also be used as permitted by the Winnebago Rules of Evidence.

2. Objections to admissibility. Subject to the provisions of Section 2-503(2) and subdivision (3)(C) of this Section, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reasons which would require the exclusion of the evidence if the witness were then present and testifying.

3. Effect of errors and irregularities in depositions.

A. As to notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

B. As to disqualification of officer. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

C. As to taking of deposition.

i. Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

ii. Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of the parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

iii. Objections to the form of written questions submitted under Section 2-506 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within five days after service of the last questions authorized.

D. As to completion and return of deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer under Sections 2-505 and 2-506 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained. [TCR 86-109, 94-07]

2-508 Interrogatories to parties.

1. Availability: procedures for use. Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of Court, be served

upon the plaintiff after commencement of the action upon any other party with or after service of the summons and complaint upon that party. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within thirty days after the service of the interrogatories, except that a defendant may serve answers or objections within forty-five days after service of the summons and complaint upon that defendant. The Court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under Section 2-512(1) with respect to an objection to or other failure to answer an interrogatory.

2. Scope: use at trial. Interrogatories may relate to any matters which can be inquired into under Section 501(2), and the answers may be used to the extent permitted by the Winnebago Rules of Evidence. An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the Court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pre-trial conference or other later time.

3. Option to produce business records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, including a compilation, abstract or summary thereof, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and identify, as readily as can the party served, the records from which the answer may be ascertained. [TCR 86-109, 94-07]

2-509 Production of documents and things and entry upon land for inspection and other purposes.

1. Scope. Any party may serve on any other party a request (A) to produce and permit the party making the request, or someone acting on the requestor's behalf, to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, phono records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonable usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Section 2-501(2) and which are in the possession, custody or control of the party upon whom the request is served; or (B) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Section 2-501(2).

2. Procedure. The request may, without leave of Court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. The party upon whom the request is served shall serve a written response within thirty days after the service of the request, except that a defendant may serve a response within forty-five days after service of the summons and complaint upon that defendant. The Court may allow a shorter or longer time. The response shall state, with respect to each item or category, that

inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under Section 2-512(1) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested. A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

3. Persons not parties. A person not a party to the action may be compelled to produce documents and things or to submit to an inspection as provided in Section 2-322. [TCR 86-109, 94-07]

2-510 Physical and mental examination of persons.

1. Order for examination. When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the Court may order the party to submit to a physical or mental examination by a suitably licensed or certified examiner to produce for examination the person in the party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.
2. Report of examining physician.
   A. If requested by the party against whom an order is made under Section 2-510(1) or the person examined, the party causing the examination to be made shall deliver to the requesting party a copy of the detailed written report of the examiner setting out the examiner's findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery, the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report or examination of a person not a party, the party shows that the party is unable to obtain it. The Court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if an examiner fails or refuses to make a report the Court may exclude the examiner's testimony if offered at the trial.
   B. By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege the party may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine the party in respect of the same mental or physical condition.
   C. This subdivision applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subdivision does not preclude discovery of a report of an examiner or the taking of a deposition of the examiner in accordance with the provisions of any other section of this Act. [TCR 86-109, 94-07]

2-511 Requests for admission.

1. Request for admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Section 2-501(2) set forth in the request that relate to statements or opinions of fact or of the application of law to fact including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise

furnished or made available for inspection and copying. The request may, without leave of Court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within thirty days after service of the request, or within such shorter or longer time as the Court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney, but, unless the Court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of forty-five days after service of the summons and complaint upon that defendant. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer to deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who considers that a matter on which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of Section 2-512(3) deny the matter or set forth reasons why the party cannot admit or deny it. The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the Court determines that an objection is justified, it shall order that an answer be served. If the Court determines that an answer does not comply with the requirements of this Section, it may order either that the matter is admitted or that an amended answer be served. The Court may, in lieu of these orders, determine that final disposition of the request be made at a pre-trial conference at a designated time prior to trial. The provisions of Section 2-512(1)(D) apply to the award of expenses incurred in relation to the motion.

2. Effect of admission. Any matter admitted under this Section is conclusively established unless the Court on motion permits withdrawal or amendment of the admission. Subject to the provision of Section 2-219 governing amendment of a pre-trial order, the Court may permit withdrawal or amendment when the presentation of the merits of the action be sub-served thereby, and the party who obtained the admission fails to satisfy the Court that withdrawal or amendment will prejudice that party in maintaining the action or defense on the merits. An admission made by a party under this Section is for the purpose of the pending action only and is not any admission for any other purpose nor may it be used against the party in any other proceeding. [TCR 86-109, 94-27]

2-512 Failure to make or cooperate in discovery: sanctions.

1. Motion for order compelling discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:
   A. Appropriate Court. An application for an order to a party may be made to the Tribal Court, or, on matters relating to a disposition, to the Court in the jurisdiction where the deposition is being taken if necessary. An application for an order to a deponent who is not a party may be made to the Court in the jurisdiction where the deposition is being taken.
   B. Motion. If a deponent fails to answer a question propounded or submitted under Sections 2-505 or 2-506, or a corporation or other entity fails to make a designation under Section 2-505(2)(F) or Section 2-506(1) or a party fails to answer an interrogatory submitted

under Section 2-508, or if a party, in response to a request for inspection submitted under Section 2-509, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order. If the Court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Section 2-501(3).

C. Evasive or incomplete answer. For purposes of this subdivision, an evasive or incomplete answer is to be treated as a failure to answer.

D. Award of expenses of motion. If the motion is granted, the Court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay the party or deponent who opposed the motion the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the Court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust. If the motion is denied, the Court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the Court finds that the making of the motion was substantially justified or that other circumstances made an award of expenses unjust. If the motion is granted in part and denied in part, the Court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

2. Failure to comply with order.

A. Sanctions by Court in jurisdiction where deposition is taken. If a deponent fails to be sworn or to answer a question after being directed to do so by the Court in the jurisdiction in which the deposition is being taken, the failure may be considered a contempt of that Court. Sanctions imposed in such matters by any foreign Court shall be given full faith and credit and promptly enforced by the Tribal Court, subject to the Tribal Court's authority to modify the sanctions as justice may require.

B. Sanction by Court in which action is pending. If a party or an officer, director, or managing agent of a party or a person designated under Section 2-505(2)(F) or Section 2-506(1) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (1) of this Section or Section 2-510, the Court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

i. An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

ii. An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;

iii. An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

iv. In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of Court the failure to obey any orders except an order to submit to a physical or mental examination;

v. Where a party has failed to comply with an order under Section 2-510(1) requiring that party to produce another for examination, such orders as are listed in paragraphs (i), (ii), and (iii) of this subdivision, unless the party failing to comply shows that the party is unable to produce such person for examination. In lieu of any of the foregoing orders or in addition thereto, the Court shall require the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the Court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

3. Expenses on failure to admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Section 2-511, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the Court for an order requiring the other party to pay the other party the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The Court shall make the order unless it finds that (A) the request was held objectionable pursuant to Section 2-511(1); or (B) the admission sought was of no substantial importance; or (C) the party failing to admit has reasonable ground to believe that the party might prevail on the matter; or (D) there was other good reason for the failure to admit.

4. Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection. If a party or an officer, director, or managing agent of a party or a person designated under Section 2-505(2)(F) or Section 2-506(1) to testify on behalf of a party fails (A) to appear before the officer who is to take the deposition, after being served with a proper notice; or (B) to serve answers or objections to interrogatories submitted under Section 2-508, after proper service of the interrogatories, the Tribal Court on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (i), (ii), and (iii) of subdivision (1)(B) of this Section. In lieu of any order in addition thereto, the Court shall require the party failing to act or the attorney advising that party or both to the reasonable expenses, including attorney's fees, caused by the failure, unless the Court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust. The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Section 2-501(3). [TCR 86-109, 94-07, 94-27]

TITLE 2
ARTICLE 6
WITNESSES

2-601 Issue and service of subpoena for witnesses.
2-602 Subpoenas--contents.
2-603 Subpoena for deposition.
2-604 Subpoena for agency hearings.
2-605 Witness may demand fees--exception.
2-606 Disobedience of subpoena.
2-607 Attachment of witness.
2-608 Punishment for contempt.
2-609 Discharge when imprisonment illegal.
2-610 Requisites of attachment--order of commitment.
2-611 Examination of prisoner.
2-612 Prisoner's custody during examination.
2-613 Witness privileged.
2-614 Witness may demand fees each day--exception.
2-615 Special provisions for Tribal agencies.

2-601 Issue and service of subpoena for witnesses. The clerk of the Court shall, on application of any party having a cause or any matter pending in the Court, issue a subpoena for a witness, under the seal of the Court. The clerk may issue separate subpoenas for each person, issue one subpoena carrying the names of all persons subpoenaed, or may at the request of any party, issue subpoenas in blank. A subpoena may be served by the Tribal or Bureau of Indian Affairs police, or by the party, or any other person in the manner provided in Section 2-317. When a subpoena is not served by the Tribal or Bureau of Indian Affairs police, proof of service shall be shown by affidavit; but no costs of service of the same shall be allowed, except when served by the Tribal police, a licensed process server, Bureau of Indian Affairs police, or a person serving by special appointment. [TCR 86-109, 94-07]

2-602 Subpoenas--contents. The subpoena shall be directed to the person therein named, requiring him/her to attend at a particular time and place to testify as a witness; and it may contain a clause directing the witness to bring with him/her any book, writing or other thing, under his/her control, which he/she is bound by law to produce as evidence. [TCR 86-109]

2-603 Subpoena for deposition. When the attendance of the witness before any officer authorized to take depositions is required, the subpoena may be issued by such officer. [TCR 86-109]

2-604 Subpoena for agency hearings. When the attendance of the witness is required before any Tribal agency authorized to issue a subpoena, the subpoena may be issued by any officer of the agency or by such person as may be authorized to issue subpoena by agency rule. [TCR 86-109]

2-605 Witness may demand fees--exception. A witness may demand his/her traveling fees and fee for one day's attendance as shall be set by Court rule, when the subpoena is served upon him/her; and if the same be not paid, the witness shall not be obligated to obey the subpoena. The fact of such demand and non-payment shall be stated in the return, provided, however, that witnesses subpoenaed by any Tribal department, board, commission or legislative committee authorized to issue subpoenas shall be paid their attendance and necessary travel, as provided by law for witnesses in other cases, at the time their testimony is concluded out of funds appropriated to such department, board, commission or legislative committee. In the case of subpoena issued by such Tribal agencies, the witness may not refuse to attend because fees and travel expenses were not paid in advance. [TCR 86-109]

2-606 Disobedience of subpoena. Disobedience of a subpoena, or refusal to be sworn or to answer as a witness, when lawfully ordered, may be punished as a contempt of the Court or officer by whom his/her attendance or testimony is required. [TCR 86-109]

2-607 Attachment of witness. When a witness fails to attend in obedience to a subpoena (except in case of a demand and failure to pay his/her fees), the Court or officer before whom his/her attendance is required may issue an attachment to the chief of the Tribal police or the Bureau of Indian Affairs police or their deputy, commanding him/her to arrest and bring the person therein named before the Court or officer, at a time and place to be fixed in the attachment, to give his/her testimony and answer for the contempt. If the attachment be not for immediately bringing the witness before the Court or officer, a sum may be fixed not to exceed one hundred dollars ($100.00) in which the witness may give an undertaking, with surety, for his/her appearance; such sum shall be endorsed on the back of the attachment; and if no sum is so fixed and endorsed, it shall be one hundred dollars ($100.00). If the witness be not personally served, the Court may, by a rule, order him/her to show cause why an attachment should not issue against him/her. [TCR 86-109, 94-07]

2-608 Punishment for contempt.

1. The punishment for the contempt provided in Section 2-607 of this Act shall be as follows: when the witness fails to attend, in obedience to the subpoena, except in cases of a demand and failure to pay his/her fees, the Court or officer may fine the witness in a sum not exceeding fifty dollars ($50.00). In case the witness attends but refuses to be sworn or to testify, the Court or officer may fine the witness in a sum not exceeding fifty dollars ($50.00), or may imprison him/her in the Tribal jail, there to remain until he/she shall submit to be sworn, testify, or give his/her deposition. The fine imposed by the Court or Tribal agency shall be paid into the Tribal treasury, and that imposed by the officer at a deposition shall be for the use of the party for whom the witness was subpoenaed. The witness shall also be liable to the party injured for any damages occasioned by his/her failure to attend, or his/her refusal to be sworn, testify, or give his/her deposition.
2. The punishment provided in this Section shall not apply where the witness refuses to subscribe a deposition. The punishment provided in this Section is civil in nature, and shall not be interpreted in any way as a criminal punishment, nor shall the punished person be deemed convicted of any criminal offense.
3. When the witness purges his/her contempt, the Court, officer, or agency may suspend any punishment imposed. [TCR 86-109]

2-609 Discharge when imprisonment illegal. A witness so imprisoned by an officer before whom his/her deposition is being taken, by a Tribal agency officer, may apply to a judge of the Tribal Court who shall have power to discharge him/her, if it appears that his/her imprisonment is illegal. [TCR 86-109]

2-610 Requisites of attachment--order of commitment. Every attachment for the arrest, or order of commitment to jail of a witness by the Court or an officer, pursuant to this Article, must be under the seal of the Court or officer, if he/she has an official seal, and must specify, particularly, the cause of arrest or commitment; and if the commitment be for refusing to answer a question, such question must be stated in the order. Such order of commitment may be directed to the Tribal or Bureau of Indian Affairs police, and shall be executed by committing him/her to the Tribal jail, and delivering a copy of the order to the jailer. [TCR 86-109]

2-611 Examination of prisoner. A person confined in the Tribal jail may by order of the Tribal Court be required to be produced for oral examination at a hearing, but in all other cases his/her examination must be by deposition. [TCR 86-109]

2-612 Prisoner's custody during examination. While a prisoner's deposition is being taken, he/she shall remain in the custody of the officer having him/her in charge who shall afford reasonable facilities for the taking of the deposition. [TCR 86-109]

2-613 Witness privileged. A witness shall not be liable to be sued in the Tribal Court if he/she does not reside within the Tribal jurisdiction by being served with a summons while going, returning, or attending in obedience to a subpoena. [TCR 86-109]

2-614 Witness may demand fees each day--exception. At the commencement of each day after the first day, a witness may demand his/her fees for that day's attendance in obedience to a subpoena; and if the same be not paid, he/she shall not be required to remain, except witnesses subpoenaed by any Tribal department, board, commission, or legislative committee or body authorized by law to issue subpoenas shall be paid for their attendance and necessary travel from that agency's approved budget as provided by law in other cases at the time their testimony is completed. [TCR 86-109]

2-615 Special provisions for Tribal agencies.

1. No Tribal agent or employee may be required to attend and testify in their official capacity for any private party absent the consent of their department head or higher ranking superior.
2. No Tribal agent or employee may be paid a witness fee in addition to their regular salary or other compensation, if they are on duty at the time they are required to attend and testify, and shall be deemed to have elected to receive their regular salary or other compensation unless they request leave without pay prior to the time they appear in response to the subpoena, provided, that when such agents or employees appear and testify while being paid the regular salary or other compensation, the normal witness fee shall be charged as costs in the case for the benefit of the Tribe, and the agent or employee's supervisor may require prepayment of said fees as a condition precedent of his/her approval for their appearance. Such witnesses shall be entitled to receive their travel costs, if any, from the party in advance as in other cases. [TCR 86-109]

TITLE 2
ARTICLE 6, WITNESSES
SUBPART A
TESTIMONY UNDER PRIVILEGE AGAINST PROSECUTION

2-650 Privilege for committee testimony.
2-651 Procedure for claiming privilege.
2-652 Oaths.
2-653 Penalties.
2-654 Disgrace as ground for refusal to testify.
2-655 Prosecution.
2-656 Fees and mileage.

2-650 Privilege for committee testimony. No testimony given by a witness before the Tribal legislative body, or any agency established by Tribal law having power to issue a subpoena, shall be used as evidence in any criminal proceeding against him/her in any Court, except in a prosecution for perjury committed in giving such testimony if such person is granted immunity as provided in Section 2-651. An official paper or record produced by him/her is not within the privilege. [TCR 86-109]

2-651 Procedure for claiming privilege. In the case of proceedings before a committee or agency, when two-thirds of the members of the full committee or agency shall by affirmative vote have authorized such witness to be granted immunity under this Article with respect to the transactions, matters, or things, concerning which he/she is compelled, after having claimed his/her privilege against self-incrimination, to testify or produce evidence by the direction of the presiding officer, and, when an order of the Tribal Court has been entered into the record requiring said person to testify or produce evidence, such person shall be privileged as stated in Section 2-650 of this Article. Such an order may be issued by a Tribal Court judge upon application by a duly authorized representative of the committee or agency concerned, accompanied by the written approval of the Tribal legislative body. The Court shall not grant immunity to any witness without first having notified the Tribal attorney of such action. The Tribal attorney shall be notified of the time of each proposed application to the Tribal Court and shall be given an opportunity to be heard with respect thereto prior to the entrance into the record of the order of the Tribal Court. No witness shall be exempt from prosecution for perjury or contempt committed while giving testimony or producing evidence under compulsion as provided in this Section. [TCR 86-109, 94-07]

2-652 Oaths. The members of the Tribal legislative body, a chairman or equivalent officer or any committee or agency authorized to issue subpoenas, and any officer or employee of the commission or agency authorized by agency or commission rule, is empowered to administer oaths to witnesses in any case under their examination. [TCR 86-109]

2-653 Penalties.

1. Every person who, having been summoned as a witness by the authority of the Tribal legislative body or other Tribal agency, authorized to take testimony may compel attendance of witnesses by subpoena, to give testimony or produce papers under a grant of immunity provided by Section 2-651 upon any matter under inquiry before that body, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be punishable by a civil fine of not more than five hundred dollars ($500.00) to be imposed by that body, and to an attachment and commitment to be imposed by that body to the Tribal jail until such testimony be given.
2. In addition to, or in the alternative to civil punishment, the agency may proceed in the Tribal Court for an order requiring such witness to testify, and if such order is issued and disobeyed by the

witness, the witness shall be guilty of an offense, and may be fined not more than five hundred dollars ($500.00), or imprisoned in the Tribal jail for a term not exceeding six months, or both. [TCR 86-109, 94-27]

2-654 Disgrace as ground for refusal to testify. No witness is privileged to refuse to testify to any fact, or produce any paper, respecting which he/she shall be examined by the Tribal legislative body, or by any subordinate committee or agency thereof authorized to issue subpoenas, upon the ground that his/her testimony to such fact or his/her production of such paper may tend to disgrace or otherwise render him/her infamous, provided that such fact or paper is reasonably related to the exercise by the body, agency, or committee of authority delegated to it by law. [TCR 86-109]

2-655 Prosecution. Whenever a body before whom a witness granted immunity pursuant to this subpart believes that a criminal prosecution pursuant to Section 2-653(2) should be instituted, it shall certify such fact to the Tribal attorney general or prosecutor, whose duty it shall be to bring the matter in the Court by information or complaint for prosecution if the person has not purged his/her contempt within forty eight hours. [TCR 86-109]

2-656 Fees and Mileage.

1. Witnesses before legislative and administrative bodies compelled to attend by subpoena shall be paid the same fees and mileage as are paid in civil cases in the Tribal Court from the approved budget of said body.
2. Witness fees and allowances for mileage shall be set by rule of the Court. Witness fees shall not exceed the amount set for witness fees by Part 11 of the Code of Federal Regulations. Mileage fees shall not exceed the federal mileage rate. [TCR 86-109, 94-07]

TITLE 2
ARTICLE 7
JURORS

2-701 Meeting for selection of jurors.
2-702 Court clerk's jury selection roll.
2-703 Preparation of jury wheel.
2-704 Drawing general jury panel.
2-705 Use of a jury panel.
2-706 Certifying and sealing lists.
2-707 Oath and delivery of envelopes.
2-708 Sealing and retaining juror name cards.
2-709 Refilling wheel.
2-710 Summoning jurors.
2-711 On-call system jurors.
2-712 Drawing trial jurors from panel.
2-713 Qualifications and exemptions of jurors.
2-714 Substantial compliance.
2-715 Oath to jury.
2-721 Discharge of employee for jury service--penalty.
2-722 Civil liability--damages.

2-701 Meeting for selection of jurors.

1. On the first Monday in November, or as soon thereafter as may be, and, at any time upon the order of the chief appellate judge of the appellate Court, the Jury Selection Board, composed of the Tribal secretary or one of his/her deputies, the Tribal tax director or one of his/her deputies, the chief of the Tribal police or one of his/her deputies, the chairman of the board of commissioners of the Tribal housing authority or his/her delegate, the Court clerk or one of his/her deputies, and one of the judges of the Court, shall meet at the office of the Court clerk and select from a list to be compiled of all qualified jurors, as prescribed in this Article, all qualified jurors for service in the Tribal Court for the ensuing calendar year in the manner hereinafter provided.
2. For the purpose of ascertaining the names of all persons qualified for jury service, it shall be the duty of the following officers to provide the following lists of qualified prospective jurors to the Court clerk:
   A. The Tribal secretary shall supply a list of all enrolled Tribal members of their households over eighteen years of age who are residents of the Tribal jurisdiction.
   B. The Tribal tax director shall supply a list of all individual taxpayers irrespective of Tribal membership over eighteen years of age who are residents of the Tribal jurisdiction.
   C. The chairman of the board of commissioners of the Tribal housing authority shall supply a list of all known tenants of the housing authority and members of their households irrespective of Tribal membership over eighteen years of age who are residents of the Tribal jurisdiction.
   D. The Court clerk shall supply a list of all persons over eighteen years of age irrespective of Tribal membership who have registered upon the Court clerk's jury selection roll for jury service.
3. Each such list shall contain, insofar as is known, the date of birth or age, name, and actual place of residence of each person within the category on the list.
4. Whenever possible, these lists shall be prepared at least thirty days prior to the meeting to allow time for the typing of the names contained therein on cards as hereafter, or shall be presented typed upon the cards as thereafter provided.
5. Whenever such is, or may become reasonably available and efficient, the lists may be printed from computer memory on cards in the manner hereafter provided. [TCR 86-109, 94-07]

2-702 Court clerk's jury selection roll. It shall be the duty of the Court clerk to maintain at all times a jury selection roll upon which any person who is or may be eligible for jury service may enter their name,

date of birth, and place of residence. Such roll shall be provided to the jury selection board in order that all qualified persons who may not be identified in paragraphs (A), (B), or (C) of subsection (2) of Section 2-701 of this Article shall have the opportunity for jury service. [TCR 86-109]

2-703 Preparation of jury wheel. Said officers shall write or cause to be written or typed the names of all persons who are known to be, or may be qualified jurors under the law on separate cards of uniform size and color, writing also on said cards, whenever possible, the post office address of each juror so selected, along with their age or date of birth and place of residence under the direction of the Court clerk. Whenever such can be avoided, no person's name shall be placed upon more than one card. The expenses of preparation of such cards are to be paid from the Court fund. The cards containing said names shall be deposited in a circular hollow wheel, to be provided for such purpose by the Court clerk after the jury selection board has examined the contents thereof and removed therefrom and destroyed any cards found therein. Said wheel shall be in the form of a drum made of iron, steel, or other substantial material, and shall be so constructed as to freely revolve on its axle and big enough to freely mix all the cards placed therein, the size thereof in each case to be determined by the number of names placed therein, and shall be locked at all times, except when in use as hereinafter provided, by the use of two separate locks, so arranged that the key to one will not open the other lock; and said wheel and the clasps thereto attached into which the locks shall be fitted, shall be so arranged that said wheel cannot be opened unless both of said locks are unlocked at the time the wheel is opened. The keys to such locks shall be kept, one by the chief of the Tribal police, or Bureau of Indian Affairs police and the other by the Court clerk. The chief of the Tribal police, or Bureau of Indian Affairs police, and the Court clerk shall not open such wheel, not permit the same to be opened by any person, except at the time and in the manner and by the persons herein specified; but said chief of the Tribal police, or Bureau of Indian Affairs police, and Court clerk shall keep such wheel, when not in use, in a safe and secure place where the same cannot be tampered with. [TCR 86-109, 94-07]

2-704 Drawing general jury panel.

1. The judges of the Court shall, more than twenty days prior to each jury docket of Court, determine approximately the number of jurors that are reasonably necessary for jury service in the Court during the jury docket, and shall thereupon order the drawing of such number of jurors from the wheel, said jury to be known as the general panel of jurors for service for the respective jury docket for which they are designated to serve. A majority of said judges, or the Chief Judge, are authorized to act in carrying out the provisions of this Section.
2. The Court clerk or one of his/her deputies and the chief of the Tribal police, or the Bureau of Indian Affairs police, or one of his/her deputies in open Court and under the direction of the Chief Judge of the Tribal Court, or during his/her absence or disability, some other judge of the Tribal Court, shall draw from the wheel containing the names of the jurors, after the same has been well turned so that the cards therein are thoroughly mixed, one by one until the number of jurors for jury service as directed by the Court are procured and shall record such names as they are drawn. The officers attending such drawing shall not divulge the name of any person that may be drawn as a juror to any person.
3. Additional and other drawing of as many names as the Court may order may be had at any such time as the Court or judge may order for the completion of a jury panel, or for the impaneling of a new jury if, in the judgment of the Court, the same shall be necessary, or if, for any cause, the Court, in its discretion, shall deem other jurors necessary. The Court may excuse or discharge any person drawn and summoned as a juror, whenever, in its discretion, such action shall be deemed expedient.

4. No person may be required, over his/her objection, to render service as a juror for more than a total of twenty working days in any one calendar year unless, when this time limit is reached, he/she is sitting on a panel engaged in the consideration of a case, in which event he/she may be excused when such case is terminated; provided, that if the judge is of the opinion that the jury business of a jury docket fixed by the Court may be concluded within six days, he/she may require a jury, or a juror, to remain until the termination of said jury service. Persons summoned for jury service need not be required to serve during previously fixed days or weeks or a docket fixed by the Court for jury trials, but they may be recalled from time to time as the trial needs of the Tribal Court may require, without regard to the docket term fixed by the Court for jury trials for which they were originally summoned. [TCR 86-109, 94-07]

2-705 Use of a jury panel. The general panel of jurors shall be used to draw juries in all actions tried during the jury docket for which they were summoned. In the event of a deficiency of said general panel at any given time to meet the requirements of the Court, the presiding judge having control of said general panel shall order such additional jurors to be drawn from the wheel as may be sufficient to meet such emergency, but such jurors shall act only as special jurors and shall be discharged as soon as their services are not further needed. Resort to the wheel shall be had in all cases to fill out the general panel, except when only a single jury is needed or when the Court determines that undue delay will be caused thereby to the prejudice of a party, in which case the Court may issue an open venire to the chief of the Tribal police, or Bureau of Indian Affairs police, or other suitable person for such number of jurors as may be necessary to be selected from the body of the Tribal jurisdiction without resort to the jury wheel, provided, that no person shall be called to serve under an open venire more often than once each year. [TCR 86-109]

2-706 Certifying and sealing lists. The list of names so drawn for the general panel shall be certified under the hand of the Court clerk or the deputy doing the drawing and the judge in whose presence said names were drawn from the wheel to be the list drawn by said clerk for the said jury docket, and shall be sealed up in envelopes endorsed "jurors for the jury docket of the Tribal Court scheduled to commence on _____" (filling in the blank with the appropriate date) and the clerk doing the drawing shall write his/her name across the seals of the envelopes. [TCR 86-109, 94-07]

2-707 Oath and delivery of envelopes. The judge attending the drawing shall deliver such envelopes to the Court clerk, or one of his/her deputies, and the judge shall, at the same time, administer to the Court clerk and to each of his/her deputies an oath in substance as follows: "You and each of you do solemnly swear that you will not open the jury lists now delivered to you, nor permit them to be opened, until the time prescribed by law, nor communicate to anyone the name or names of persons appearing on the jury lists until the time a list is opened as prescribed by law at which time it shall be published, that you will not, directly or indirectly converse or communicate with anyone selected as juror concerning any case pending for trial in the Court at the next jury docket, so help you God," or as prescribed in subsection 732 (b) of this Act. [TCR 86-109, 94-07]

2-708 Sealing and retaining juror name cards. When the names are drawn for jury service the cards containing such names shall be sealed in separate envelopes, endorsed "cards containing the names of jurors for the petit jury for the jury docket of the Tribal Court commencing on _____" (filling in the blank with the appropriate date); and said envelopes shall be retained securely by the clerk, unopened, until after the jury has been impaneled for such docket, and, after such jurors so impaneled have served one jury docket, the envelopes containing the cards bearing the names of the jurors for that docket shall then be opened by the Court clerk, or his/her deputy, and those cards bearing the names of persons who have not been impaneled and who have not served on a jury shall be immediately returned to the wheel by the Court clerk or his/her deputy; and the cards bearing the names of the persons serving on a jury shall be put in a

box provided for that purpose for the use of the officer who shall next select jurors for the wheel, provided, that no person shall serve as a juror more often than once a year, except upon order of the Court for lack of sufficient jurors or as herein provided. [TCR 86-109, 94-07]

2-709 Refilling wheel. If the wheel containing the names of jurors be lost or destroyed, with the contents thereof, or if all the cards in said wheel be drawn out, such wheel shall immediately be refurnished, and cards bearing the names of jurors shall be placed therein immediately in accordance with law. [TCR 86-109]

2-710 Summoning jurors. The summons of persons for service on the juries in the Tribal Court shall be served by the Court clerk by mailing a copy of such summons containing the time, place, and the name of the Court upon which said jurors are required to attend, by registered or certified mail, or as directed by the judge, to the person selected for service not less than ten days before the day said person is to appear as a juror in the Court. The Court clerk shall make a return of such service by filing an affidavit stating the date of mailing and type of mail used in sending the summons; provided, that this shall not prevent service of special open venire or talisman by the chief of the Tribal police, or Bureau of Indian Affairs police. [TCR 86-109, 94-07]

2-711 On-call system jurors.

1. When an on-call system is implemented by order of the Chief Judge of the Tribal Court, each juror retained for service subject to call shall be required to contact a center for information as to the time and place of his/her next assignment.
2. For purposes of this Section, "on-call system" means a method whereby the Chief Judge of the Tribal Court estimates the number of jurors required for a jury docket of Court, and those jurors not needed during any particular period are released to return to their home or employment subject to call when needed.
3. Pursuant to summons for service on petit juries in the Tribal Court, each qualified, nonexempt juror is retained for service subject to call and is assigned to a judge or a case. [TCR 86-109, 94-07]

2-712 Drawing trial jurors from panel. Prospective jurors for the trial of an action shall be drawn by the Court clerk, in open Court in the presence of a judge, by lot either by wheel, by numbering the prospective jurors' cards and then drawing numbers from a pool containing a numbered marker for each prospective juror available to be called, or by some similar form of random drawing approved by the Court. The initial six jurors shall be drawn as shortly before the trial of the action as is reasonably practical in the discretion of the Court. As prospective jurors are removed or dismissed by challenge, whether peremptory or for cause, the clerk shall draw another name from the general pool who shall take the place of the challenged prospective juror and be subject to voir dire to the same extent as the prospective jurors originally chosen. [TCR 86-109]

2-713 Qualifications and exemptions of jurors.

1. All members of the Tribe and other citizens of the United States who are over eighteen years of age and have resided within the Tribal jurisdiction for a period of thirty days, who are of sound mind and discretion and of good moral character are competent to act as jurors, except as herein provided.
2. The following persons are not qualified to serve as jurors:
   A. Justices of the appellate Court of the Tribe, or the employees in their office.

B. Judges or magistrates of the Tribal Court, or the employees in their offices.
C. The Court clerk, or the employees in his/her office.
D. The chief of the Tribal police or the Bureau of Indian Affairs police, his/her deputies, and the employees in the police department.
E. Jailers having custody of prisoners, or other Tribal, state, or federal law enforcement officers.
F. Licensed attorneys or advocates engaged in the practice of law.
G. Persons who have been convicted of any felony or crime involving moral turpitude, provided that when such conviction has been vacated, overturned upon appeal, or pardoned or when any such person has been fully restored to his/her civil rights by the jurisdiction wherein such conviction occurred, the person shall be eligible to serve as a juror.
H. Elected Tribal officials.

3. Persons over seventy years of age, ministers, practicing physicians, optometrists, dentists, public school teachers, federal employees, regularly organized full time fire department employees, and women with otherwise unattended minor children not in school may be excused from jury service by the Court, in its discretion, upon request.
4. Any Tribal member, Tribal taxpayer, or person employed within the Tribal jurisdiction may serve as a juror notwithstanding that they are not a resident of the Tribal jurisdiction if they volunteer to do so by signing the jury selection roll maintained by the Court clerk. [TCR 86-109, 94-07]

2-714 Substantial compliance. A substantial compliance with the provisions of this Article, shall be sufficient to prevent the setting aside of any verdict rendered by a jury chosen hereunder, unless the irregularity in drawing, and summoning, or impaneling the same resulted in depriving a party litigant of some substantial right; provided, however, that such irregularity must be specifically presented to the Court at or before the time the jury is sworn to try the cause. [TCR 86-109]

2-715 Oath to jury. After selection of the jury, and prior to the opening statements of the parties, the Court or clerk shall place the jury under oath or affirmation to well and truly try and determine the action before them exclusively upon the evidence presented in the Court and the law as given by the Court, and to return their true verdict thereon without partiality for any unlawful cause or reason. [TCR 86-109]

2-721 Discharge of employee for jury service--penalty. Every person, firm, or corporation who discharges an employee or causes an employee to be discharged because of said employee's absence from his/her employment by reason of said employee's having been required to serve as a juror on a jury of the Tribal Court, or any other Court, shall be guilty of an offense, and, upon conviction thereon, shall be punishable by a fine not to exceed five hundred dollars ($500.00). [TCR 86-109, 94-07]

2-722 Civil liability--damages. Every person, firm or corporation who discharges or causes to be discharged an employee because of said employee's absence from his/her employment by reason of said employee having been required to serve as a juror on a jury, in the Tribal Court or any other Court, shall be liable to the person so discharged in a civil action at law for both actual and punitive damages. Damages shall include all pecuniary losses suffered including, but not limited to, lost earnings, both past and future, mental anguish, and all reasonable damages incurred in obtaining other suitable employment, including the cost of relocation and retraining, if any, and a reasonable attorney's fee to be determined by the Court. [TCR 86-109, 94-07]

TITLE 2
ARTICLE 8
TRIAL

2-801 Trial defined.
2-802 Trial of issues.
2-803 Jury trial of right.
2-804 Trial by jury or by the Court.
2-805 Assignment of cases for trial.
2-806 Consolidation; separate trials.

2-801 Trial defined. A trial is a judicial examination of the issues, whether of law or fact, in an action. [TCR 86-109]

2-802 Trial of issues. Issues of law must be tried by the Court. Issues of fact arising in actions for which a jury trial is provided by law may be tried by a jury, if a jury trial is demanded, unless a reference be ordered, as hereinafter provided. All other issues of fact shall be tried to the Court. [TCR 86-109]

2-803 Jury trial of right.

1. Right preserved. The right of trial by jury as declared by the Tribal Constitution or a statute of the Tribe, or the Indian Civil Rights Act of 1968 shall be preserved inviolate. In all actions, except forcible entry and detainer, arising in contract or tort where the amount in controversy, or the value of the property to be recovered, as stated in the prayer for relief or an affidavit of a party, or as found by the Court where the amount in controversy is questioned by the affidavit of the adverse party, exceeds ten thousand dollars ($10,000.00), except as otherwise specifically provided by law, and in all actions for the involuntary removal of children from the custody of their parents or custodian and the involuntary termination of parental rights, the action may be tried to a jury upon demand of any party. All other actions and issues of fact shall be tried to the Court.
2. Demand. Any party entitled to a jury trial may demand a trial by jury of an issue triable of right by a jury pursuant to any law of the Tribe by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than ten days after the service of the last pleading directed to such issue. Such demand may be endorsed upon a pleading of the party. Such demand shall not be effective unless, at the time of filing or at such later time as the Court shall by rule allow, the party making such demand deposit with the Court clerk a reasonable jury fee in such amount as the Court shall by rule determine. The amount of such deposit shall be set by the Court in such amount as may be reasonably necessary to offset the costs of juror fees for the impaneling and trying of the action, without being in an amount which may preclude or prevent a party from exercising their right to a jury trial. Such rules shall contain a provision for waiver of the deposit requirement for persons proceeding in forma pauperis.
3. Same; specification of issues. In the demand, a party may specify the issues which the party wishes so tried; otherwise the party shall be deemed to have demanded trial by jury for all the issues so triable. If the party has demanded trial by jury for only some of the issues, any other party within ten days after service of the demand or such lesser time as the Court may order, may serve a demand for a trial by jury of any other or all of the issues of fact in the action.
4. Waiver. The failure of a party to serve a demand as required by this Section and to file it as required by Section 2-331(4) constitutes a waiver by the party of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties. Even though previously demanded, the trial by jury may be waived by the parties, in actions arising on contract, and with the assent of the Court in other actions, in the following manner: By the consent of the party appearing, when the other party fails to appear at the trial by him/herself or attorney.

By written consent, in person or by attorney, filed with the clerk. By oral consent, in open Court, entered on the journal. [TCR 86-109, 94-27]

2-804 Trial by jury or by the Court.

1. By jury. When trial by jury has been demanded as provided in Section 2-803, the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury, unless (A) the parties or their attorneys of record, by written stipulation filed with the Court or by an oral stipulation made in open Court and entered in the record, consent to trial by the Court sitting without a jury, or (B) the Court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist under the constitution and statutes or ordinances of the Tribe, or under the Indian Civil Rights Act.
2. By the Court. Issues not demanded for trial by jury as provided in Section 2-803 shall be tried by the Court; but, notwithstanding the failure of a party to demand a jury in an action in which such demand might have been made of right, the Court in its discretion or upon motion of a party may order a trial by jury of any or all issues properly triable to a jury.
3. Advisory jury and trial by consent. In all actions not triable by right by a jury the Court upon motion or of its own initiative may try any issue with an advisory jury or, except in actions against the Tribe when a statute of the Tribe provides for trial without a jury, the Court, with the consent of both parties, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right. [TCR 86-109, 93-84, 94-27]

2-805 Assignment of cases for trial. The district Court shall provide by rule for the placing of actions upon the trial calendar:

A. Without request of the parties; or
B. Upon request of a party and notice to the other parties; or
C. In such other manner as the Courts deem expedient. Precedence shall be given to actions entitled thereto by any statute of the Tribe. [TCR 94-07]

2-806 Consolidation; separate trials.

1. Consolidation. When different actions involving a common question of law or fact are pending before the Court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delays.
2. Separate trials. The Court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, or third party claims, or issues, always preserving inviolate the right to trial by jury as declared by the Indian Civil Rights Act, the Tribal Constitution or as given by a statute of the Tribe. [TCR 86-109]

TITLE 2
ARTICLE 8, TRIAL
SUBPART A
IMPANELING JURY

2-821 Summoning jury.
2-822 Causes for challenging jurors.
2-823 Examination of jurors.
2-824 Alternate jurors.
2-825 Order of challenges.
2-826 Challenges to jurors – filling vacancies.
2-827 Alternate method of selecting jury.
2-828 Oath of jury.
2-829 Juries of less than six-majority verdict.

2-821 Summoning jury. The general mode of summoning and impaneling the jury, in cases in which a jury trial may be had, is such as is or may be provided by Article 7 of this Act. [TCR 86-109]

2-822 Causes for challenging jurors. If there shall be impaneled, for the trial of any action, any juror, who shall have been convicted of any crime which by law renders him/her disqualified to serve on a jury; or who has been arbitrator on either side, relating to the same controversy; or who has an interest in the action; or who has an action pending between him/her and either party; or who has formerly been a juror on the same claim; or who is the employer, employee, counselor, agent, steward or attorney of either party; or who is subpoenaed as a witness; or who is of kin to either party within the second degree by blood or marriage, he/she may be challenged for such causes; in either of which cases the same shall be considered as a principal challenge, and the validity thereof be tried by the Court; and any juror who shall be returned upon the trial of any of the causes hereinbefore specified, against whom no principal cause of challenge can be alleged, may, nevertheless, be challenged on suspicion of prejudice against, or partiality for either party, or any other cause that may render him/her, at the time, an unsuitable juror; but a resident or taxpayer of the Tribal jurisdiction, or a member of the Tribe or any municipality therein shall not thereby be disqualified in actions in which the Tribe or such municipality is a party. The validity of all principal challenges and challenges for cause shall be determined by the Court. [TCR 86-109]

2-823 Examination of jurors. The Court may permit the parties or their attorneys to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event, the Court shall permit the parties or their attorneys to supplement the examination by such further inquiry as it deems proper or shall itself submit to the prospective jurors such additional questions of the parties or their attorneys as it deems proper. [TCR 86-109]

2-824 Alternate jurors. The Court may direct that not more than three jurors in addition to the regular jury be called and impaneled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict. Each side is entitled to one preemptory challenge in addition to those otherwise allowed by law if alternate jurors are to be impaneled. The additional preemptory challenges may be used against an alternate juror only, and the other preemptory challenges allowed by law shall not be used against an alternate juror. [TCR 86-109]

2-825 Order of challenges. The plaintiff first, and afterward the defendant, shall complete his/her challenges for cause. They may then, in turn, in the same order, have the right to challenge one juror each, until each shall have preemptorily challenged three jurors, but no more. [TCR 86-109]

2-826 Challenges to jurors--filling vacancies. After each challenge, the vacancy shall be filled before further challenges are made; and any new juror thus introduced may be challenged for cause as well as preemptorily. [TCR 86-109]

2-827 Alternate method of selecting jury. Notwithstanding other methods, the trial judge may direct in his/her discretion that a jury in an action be selected by calling and seating twelve prospective jurors in the jury box and then examining them on voir dire; when twelve such prospective jurors have been passed for cause, each side of the lawsuit shall exercise its preemptory challenges out of the hearing of the jury by alternately striking three names each from the list of those so passed for cause, and the remaining six persons shall be sworn to try the case. If there be more than one defendant in the case, and the trial judge determines on motion that there is a serious conflict of interest between them, he/she may, in his/her discretion, allow each defendant to strike three names from the list of jurors seated and passed for cause. In such case, he/she shall appropriately increase the number of jurors initially called and seated in the jury box for voir dire examination. [TCR 86-109]

2-828 Oath of jury. The jury shall be sworn to well and truly try the matters submitted to them in the case before them, and to give a true verdict, according to the law and the evidence. [TCR 86-109]

2-829 Juries of less than six--majority verdict. All juries shall be composed of six persons, and a unanimous verdict shall be required, except that the parties may stipulate that the jury shall consist of any number less than six and greater than two, or that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury. [TCR 86-109]

TITLE 2
ARTICLE 8, TRIAL
SUBPART B
TRIAL PROCEDURES

2-831 Order of trial.
2-832 Taking of testimony.
2-833 Exceptions unnecessary.
2-834 Instructions to jury objection.
2-835 Uniform jury instructions.
2-836 Objections to instructions--copies to parties.
2-837 View by jury.
2-838 Deliberation of the jury.
2-839 Admonition of jury on separation.
2-840 Information after retirement.
2-841 When the jury may be discharged.
2-842 Re-trial.
2-843 Proof of official record.
2-844 Determination of foreign law.
2-845 Appointment and duties of masters.

2-831 Order of trial. When the jury has been sworn in an action before a jury, and in trials to the Court, when the Court is ready to proceed, the trial shall proceed in the following order, unless the Court for special reasons otherwise directs:

1. The party on whom rests the burden of proving the issues may briefly state his/her case, and the evidence by which he/she expects to sustain it.
2. The adverse party may then briefly state his/her defense and the evidence he/she expects to offer in support of it, or the adverse party may reserve his/her opening statement until the beginning of the presentation of his/her evidence.
3. The party on whom rests the burden of proving the issues must first produce his/her evidence; after he/she has closed his/her evidence, the adverse party may interpose a motion for a directed verdict thereto upon the ground that no claim for relief or defense is proved. If the Court shall sustain the motion, no formal verdict of the jury shall be required, but judgment shall be rendered for the party whose motion for a directed verdict is sustained as the state of the pleadings or the proof shall demand.
4. If the motion for a directed verdict be overruled, the adverse party may then briefly state his/her case if he/she did not do so prior to the beginning of the presentation of the evidence, and, shall then produce his/her evidence.
5. The parties will then be confined to rebutting evidence unless the Court, for good reasons in furtherance of justice, shall permit them to offer evidence in the original case.
6. After the close of the evidence, and when the jury instructions have been finalized by the Court, the parties may then make their closing arguments as to the evidence proved and reasonable inferences to be drawn therefrom. The party having the burden of proving the issue shall first present his/her argument. Thereafter, the other party shall present his/her argument, and then, the party having the burden of proof shall have the opportunity for rebuttal argument. The Court may place reasonable limitation upon the time allowed for closing argument, provided, that each side to the action should have the same total time for argument if time restrictions are placed thereon.
7. After closing arguments of the parties have been completed, the Court shall instruct the jury as to the law of the case, and shall give a copy of the written instructions to the jury for their use during their deliberations.
8. The Court shall then place the bailiff or same other responsible person under oath to secure the jury against interference, and the jury shall retire to determine its verdict. [TCR 86-109]

2-832 Taking of testimony.

1. Form. In all trials the testimony of witnesses shall be taken orally in open Court, unless otherwise provided by a statute of this Tribe by this Act, or by the Winnebago Rules of Evidence.
2. Affirmation in lieu of oath. Whenever under this Act an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.
3. Evidence of motions. When a motion is based on facts not appearing of record the Court may hear the matter on affidavits presented by the respective parties, but the Court may direct that the matter be heard wholly or partly on oral testimony or depositions.
4. Interpreters. The Court may appoint an interpreter of its own selection and may fix his/her reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the Court may direct, and may be taxed ultimately as costs, in the discretion of the Court. [TCR 86-109, 93-84, 94-07]

2-833 Exceptions unnecessary. Formal exceptions to rulings or orders of the Court are unnecessary; but it is sufficient that a party, at the time the ruling or order of the Court is made or sought, makes known to the Court the action which he/she desires the Court to take or his/her objection to the action of the Court and his/her grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice him/her. [TCR 86-109]

2-834 Instructions to jury--objection.

1. At the close of the evidence or at such earlier time during the trial as the Court reasonably directs, any party may file written requests that the Court instruct the jury on the law as set forth in the requests. The Court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury. The Court, at its election, may instruct the jury before or after argument, or both. No party may assign as error the giving or the failure to give an instruction unless that party objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which the party objects and the grounds of the objection. Opportunity shall be given to make the objection out of the hearing of the jury. The Tribal Court shall furnish copies of the instructions to the plaintiff and defendant prior to the time said instructions are given by the Court to the jury.
2. All instructions requested, and modifications thereof, shall be reduced to writing, numbered, and signed by the party or his/her attorney asking the same and filed in the record of the case.
3. When either party asks special instructions to be given to the jury, the Court shall either give such instructions as requested, or positively refuse to do so; or give the instructions with modification in such manner that it shall distinctly appear what instructions were given in whole or part, and in like manner those refused, so that either party may except to the instructions as asked for, or as modified, or to the modification, or to the refusal.
4. All instructions given by the Court must be numbered, signed by the judge; and filed together with those asked for by the parties as part of the record. [TCR 86-109, 94-07]

2-835 Uniform jury instructions. The appellate Court, in its discretion, is authorized to promulgate by rule uniform instructions to be given in jury trials or civil or criminal actions, which, if applicable in a civil or criminal action, due regard being given to the facts and prevailing law, shall be used unless the Court determines that the instruction does not accurately state the law. [TCR 86-109, 94-07]

2-836 Objections to instructions--copies to parties. Repealed. [TCR 94-07]

2-837 View by jury. Whenever, in the opinion of the Court, it is proper for the jury to have a view of the property which is the subject of litigation, or of the place in which any material fact occurred, it may order them to be conducted, in a body, under the charge of an officer, to the place, which shall be shown to them by some person appointed by the Court for that purpose. While the jury are thus absent, no person, other than the person so appointed, shall speak to them on any subject connected with the trial. [TCR 86-109]

2-838 Deliberation of the jury. When the case is finally submitted to the jury, they shall retire for deliberation. When they retire, they must be kept together, in some convenient place, under charge of an officer, until they agree upon a verdict or be discharged by the Court, subject to the discretion of the Court, to permit them to separate temporarily at night, and at their meals. The officer having them under his/her charge shall not suffer any communication to be made to them, or make any him/herself, except to ask them if they are agreed upon their verdict, and to communicate a request by the jury to the Court, in open Court, unless by order of the Court; and he/she shall not, before their verdict is rendered, communicate to any person the state of their deliberations, or the verdict agreed upon. [TCR 86-109]

2-839 Admonition of jury on separation. If the jury are permitted to separate, either during the trial or after the case is submitted to them, they shall be admonished by the Court that it is their duty not to converse with, or suffer themselves to be addressed by, any other person, on any subject of the trial, and that it is their duty not to form or express an opinion thereon, until the case is finally submitted to them. [TCR 86-109]

2-840 Information after retirement. After the jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed as to any part of the testimony, or if they desire to be informed as to any part of the law arising in the case, they may request the officer to conduct them to the Court, where the information on the point of law shall be given in writing, and the Court may give its recollections as to the testimony on the point in dispute, or cause the same to be read by the stenographer or played back on an electronic recording device by the reporter in the presence of, or after notice to, the parties or their counsel. Upon motion in appropriate circumstances, the Court may order that other portions of the record relating to the same issue also be read or played back to the jury upon the questioned point. [TCR 86-109]

2-841 When the jury may be discharged. The jury may be discharged by the Court on account of the sickness of a juror, or other accident or calamity requiring their discharge, or by consent of both parties, or after they have been kept together until it satisfactorily appears to the Court that there is no possibility of their agreeing. [TCR 86-109]

2-842 Re-trial. In all cases where the jury are discharged during the trial, or after the case is submitted to them, it may be tried again immediately, or at a future time, as the Court may direct. [TCR 86-109]

2-843 Proof of official record.

1. Authentication.
   A. Domestic. An official record kept within the United States, or any Indian Tribal jurisdiction, state, district, or commonwealth, or within a territory subject to the administrative or judicial jurisdiction of the United States, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a

copy attested by the officer having the legal custody of the record, or by the officer's deputy, and accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of a Court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the Court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of the officer's office.

B. Foreign. A foreign official record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position (i) of the attesting person, or (ii) of any foreign official whose certificate of genuineness of signature and official position relates to the attestation or is in a chain of certificate of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of an embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the Court may, for good cause shown, (i) admit an attested copy without final attestation or (ii) permit the foreign official record to be evidenced by an attested summary with or without a final certification. The final certification is unnecessary if the record and the attestation are certified as provided in a treaty or convention to which the United States and the foreign country in which the official record is located are parties.

2. Lack of record. A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in subdivision (1)(A) of this Section in the case of a domestic record, or complying with the requirements of subdivision (1)(B) of this Section for a summary in the case of a foreign record, it is admissible as evidence that the records contain no such record or entry.

3. Other proof. This Section does not prevent the proof of official records of entry or lack of entry therein by any other method authorized by law. [TCR 86-109, 94-07, 94-27]

2-844 Determination of foreign law. A party who intends to raise an issue concerning the law of a foreign jurisdiction shall give notice in his/her pleadings or other reasonable written notice. The Court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Tribal rules of evidence. The Court's determination shall be treated as a ruling on a question of law. The Tribal Court shall take judicial notice of the law of any foreign jurisdiction within the United States published in any official publication of that jurisdiction upon reasonable notice of the law in question. The term "foreign jurisdiction within the United States" includes every federally-recognized Indian Tribe, every state, territory, or possession of the United States, the United States, and their political subdivisions and agencies. [TCR 86-109, 94-07]

2-845 Appointment and duties of masters.

1. Appointment and compensation. The Tribal Court with the concurrence of a majority of all the judges thereof may appoint one or more standing masters, and the trial judge, in an appropriate case, may appoint a special master to act in a particular case. The word "master" includes a referee, an auditor, and an examiner, a commissioner, and an assessor. The compensation to be allowed to a master shall be fixed by the Court, and shall be charged upon such of the parties or paid out of any fund or subject matter of the action, which is in the custody and control of the Court as the Court may direct. The master shall not retain the master's report as security for the

master's compensation; but when the party ordered to pay the compensation allowed by the Court does not pay it after notice and within the time prescribed by the Court, the master is entitled to a writ of execution against the delinquent party.

2. Reference. A reference to a master shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, save in the matter of account and of difficult computation of damages, a reference shall be made only upon a showing that some exceptional condition requires it.

3. Powers. The order of reference to the master may specify or limit the master's powers and may direct the master to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the master's report. Subject to the specifications and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before the master and to do all acts and make all measures necessary or proper for the efficient performance of the master's duties under the order. The master may require the production before the master of evidence upon all matters embraced in the reference, including production of all books, papers, vouchers, documents, and writings applicable thereto. The master may rule upon the admissibility of evidence unless otherwise directed by the order of reference and has the authority to put witnesses on oath and may examine them, and may call the parties to the action and examine them upon oath. When a party so requests, the master shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in Section 2-832(3) for a Court sitting without a jury.

4. Proceedings.

   A. Meetings. When a reference is made, the clerk shall forthwith furnish the master with a copy of the order of reference. Upon receipt thereof, unless the order of reference otherwise provides, the master shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within twenty days after the date of the order of reference and shall notify the parties or their attorneys. It is the duty of the master to proceed with all reasonable diligence. Either party, on notice to the parties and master, may apply to the Court for an order requiring the master to speed the proceedings and make the report. If a party fails to appear at the time and place appointed, the master may proceed ex parte, or, in the master's discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

   B. Witnesses. The parties may procure the attendance of witnesses before the master by the issuance and service of subpoenas as provided in Section 2-322. If without adequate excuse a witness fails to appear or give evidence, the witness may be punished for a contempt and be subjected to the consequences, penalties, and remedies provided in Sections 2-512(2) and 2-322(6).

   C. Statement of accounts. When matters of accounting are in issue before the master, the master may prescribe the form in which the accounts shall be submitted and in any proper case may require or receive in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of the items thus submitted or upon a showing that the form of statement is insufficient, the master may require a different form of statement to be furnished, or the accounts or specific items thereof to be proved by oral examination of the accounting parties or upon written interrogatories or in such other manner as the master directs.

5. Report.

A. Content and filing. The master shall prepare a report upon the matters submitted to the master by the order of reference and, if required to make findings of fact and conclusions of law, the master shall set them forth in the report. The master shall file the report with the clerk of the Court and serve on all parties notice of the filing. In an action to be tried without a jury, unless otherwise directed by the order of reference, the master shall file with the report a transcript of the proceedings and of the evidence and the original exhibits. The clerk shall forthwith mail to all parties notice of the filing.

B. In non-jury actions. In an action to be tried without a jury the Court shall accept the master's findings of fact unless clearly erroneous. Within ten days after being served with notice of the filing of the report, any party may serve written objections thereto upon the other parties. Application to the Court for action upon the report and upon objection thereto shall be by motion and upon notice as prescribed in Section 2-340(4). The Court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

C. In jury actions. In an action to be tried by a jury, the master shall not be directed to report the evidence. The master's findings upon the issues submitted to the master are admissible as evidence of the matters found and may be read to the jury, subject to the ruling of the Court upon any objections in point of law which may be made to the report.

D. Stipulation as to findings. The effect of a master's report is the same whether or not the parties have consented to the reference; but, when the parties stipulate that a master's findings of fact shall be final, only questions of law arising upon the report shall thereafter be considered.

E. Draft report. Before filing the master's report, a master may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions. [TCR 86-109, 94-07, 94-27]

TITLE 2
ARTICLE 8, TRIAL
SUBPART C
VERDICT

2-851 Findings by the Court.
2-852 Delivery of verdict.
2-853 Requisites of verdicts.
2-854 General and special verdict.
2-855 Special verdict and interrogatories.
2-856 Jury must assess amount of recovery.
2-857 Motions for a directed verdict and for judgment notwithstanding the verdict.

2-851 Findings by the Court.

1. Effect. In all actions tried upon the facts without a jury or with an advisory jury, the Court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Section 2-1007; and in granting or refusing interlocutory injunctions, the Court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Request for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial Court to judge the credibility of the witnesses. The findings of a master, to the extent that the Court adopts them, shall be considered as the findings of the Court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Section 2-212(2) or Section 2-222(2).
2. Amendment. Upon motion of a party made no later than ten days after entry of judgment, the Court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Section 2-1008. When findings of fact are made in actions tried by the Court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question had made in the Tribal Court an objection to such findings or has made a motion to amend them or a motion for judgment. [TCR 86-109, 94-07]

2-852 Delivery of verdict. When the jury have agreed upon their verdict, they must be conducted into the Court, and their verdict rendered by their foreman. When the verdict is announced, either party may require the jury to be polled, which is done by the clerk or the Court asking each juror if it is his/her verdict. If any one answers in the negative, the jury must again be sent out, for further deliberation. [TCR 86-109]

2-853 Requisites of verdicts. The verdict shall be written, signed by the foreman and read by the clerk to the jury, and the inquiry must be made whether it is their verdict. If any juror disagrees, the jury must be sent out again; but if no disagreement be expressed, and neither party requires the jury to be polled, the verdict is complete and the jury discharged from the case. If, however, the verdict be defective in form only, the same may, with the assent of the jury before they are discharged, be corrected by the Court. [TCR 86-109]

2-854 General and special verdict. The verdict of a jury is either general or special. A general verdict is that by which they pronounce generally upon all or any of the issues, either in favor of the plaintiff or defendant. A special verdict is that by which the jury finds facts only. It must present the facts as

established by the evidence, and not the evidence to prove them; and they must be so presented as that nothing remains to the Court but to draw from them conclusions of law. [TCR 86-109]

2-855 Special verdict and interrogatories.

1. Special verdicts. The Court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event, the Court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The Court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the Court omits any issue of fact raised by the pleadings or by the evidence, each party waives his/her right to a trial by jury of the issue so omitted unless before the jury retires, he/she demands its submission to the jury. As to an issue omitted without such demand, the Court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.
2. General verdict accompanied by answer to interrogatories. The Court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The Court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict. When the general verdict and the answers are consistent with each other, judgment shall be entered thereon, but, when the answers to one or more interrogatories is inconsistent with the general verdict, judgment may be entered pursuant to Section 2-1007 in accordance with the answers, notwithstanding the general verdict, or the Court may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, judgment shall not be entered, but the Court shall return the jury for further consideration of its answers and verdict or shall order a new trial. [TCR 86-109]

2-856 Jury must assess amount of recovery. When, by the verdict either party is entitled to recover money of the adverse party, the jury, in their verdict, must assess the amount or recovery. [TCR 86-109]

2-857 Motion for a directed verdict and for judgment notwithstanding the verdict.

1. Motion for directed verdict: When made; effect. A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having reserved the right so to do and to the same extent as if the motion had not been made. A motion for a directed verdict which is not granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts. A motion for directed verdict shall state the specific grounds therefor. The order of the Court granting a motion for a directed verdict is effective without any assent of the jury.
2. Motion for judgment notwithstanding the verdict. Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the Court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Not later than ten days after entry of judgment, a party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his/her motion for a directed verdict. A motion for a new trial may be joined with this motion, or a new trial may be prayed for in the alternative. If a

verdict was returned, the Court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of the judgment as if the requested verdict had been directed. If no verdict was returned, the Court may direct the entry of judgment as if the requested verdict had been directed or may order a new trial.

3. Same: Conditional rulings on grant of motion.

   A. If the motion for judgment notwithstanding the verdict, provided for in subsection (2) of this Section, is granted, the Court shall also rule on the motion for a new trial, if any, by determining whether it should be granted if the judgment is thereafter vacated or reversed, and shall specify the grounds for granting or denying the motion for the new trial. If the motion for a new trial is thus conditionally granted, the order thereon does not affect the finality of the judgment. In case the motion for a new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless the appellate Court has otherwise ordered. In case the motion for a new trial has been conditionally denied, the appellee on appeal may assert error in that denial; and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the appellate Court.

   B. The party whose verdict has been set aside on motion for judgment notwithstanding the verdict may serve a motion for a new trial pursuant to Section 2-1000 not later than ten days after entry of the judgment notwithstanding the verdict.

4. Same: Denial of motion. If the motion for judgment notwithstanding the verdict is denied, the party who prevailed on that motion may, on appeal, assert grounds entitling him to a new trial in the event the appellate Court concludes that the trial Court erred in denying the motion for judgment notwithstanding the verdict. If the appellate Court reverses the judgment, nothing in this Section precludes it from determining that the appellee is entitled to a new trial, or from directing the trial Court to determine whether a new trial shall be granted. [TCR 86-109, 94-07]

TITLE 2
ARTICLE 8, TRIAL
SUBPART D
MISCELLANEOUS TRIAL PROVISIONS

2-871 Provisions applicable to trials by Court.
2-872 Trial docket.
2-873 Trial docket for bar.
2-874 Order of trial of cases docketed.
2-875 Time of trial.
2-876 Continuances.
2-877 Trial by judicial panel.
2-878 Bifurcated jury trials.

2-871 Provisions applicable to trials by Court. The provisions of this Article respecting trials by jury apply, so far as they are in their nature applicable, to trials by the Court. [TCR 86-109]

2-872 Trial docket. A trial docket shall be made out by the clerk of Court, at least fifteen days before the first day of each jury or non-jury docket of the Court, and the actions shall be set for particular days in the order prescribed by the judge of the Court, and so arranged that the cases set for each day shall be considered as nearly as may be on that day. The trial docket shall be promptly mailed by the clerk to each party or their attorney of record whose action is placed on the trial docket. [TCR 86-109]

2-873 Trial docket for bar. The clerk shall make out a copy of the trial docket for the use of the bar, before the first day of the docket of the Court and cause the same to be available to the public.
[TCR 86-109]

2-874 Order of trial of cases docketed. The trial of an issue of fact, and assessment of damages in any case, shall be in the order in which they are placed on the trial docket, unless by request of the parties with the approval of the Court, or the order of the Court, they are continued or placed at the heel of the docket, unless the Court, in its discretion hear at any time a motion, and may by rule prescribe the time for hearing motions. [TCR 86-109]

2-875 Time of trial.

1. Actions shall be triable at the first trial docket of the Court, after or during which the issues therein, by the time fixed for pleading are, or shall have been made up and discovery completed, or when the defendant has failed to plead within the time fixed, the cause shall be placed on the trial docket, and shall stand for trial at such term twenty days after the issues are made up and discovery completed, and shall two non-jury trial dockets and two jury trial dockets are completed during each calendar year, unless the majority of the judges of the Court by order determine that additional trial dockets are necessary to promptly dispose of cases pending before the Court.
[TCR 86-109]

2-876 Continuances. The trial of an action shall not be continued upon the stipulation of the parties alone, but may be continued upon order of the Court. [TCR 86-109]

2-877 Trial by judicial panel.

1. The appellate Court may provide by rule for the trial of any action in the Tribal Court by judicial panel in any or all cases when no jury is allowed by law or demanded by the parties. The judicial

panel shall consist of the presiding judge to whom the case was assigned, who shall make all rulings on questions of law during the trial of the action, and two or more judges, special judges, or magistrates who shall hear the evidence. The chief appellate judge of the appellate Court, with the consent of the majority of the active judges of the appellate Court, is hereby authorized to freely appoint any person licensed to practice law before the Court as a special judge for the purpose of sitting upon a judicial panel, and may compensate such person out of the Court fund reasonable compensation for his/her services, in an amount not exceeding the daily rate paid to regular judges of the Court.

2. The judicial panel shall jointly, by majority vote, determine the facts proved by the evidence and the panel shall enter findings of fact and conclusions of law as in a trial before a single judge.
3. In a trial before a judicial panel, the votes of the judges on the panel shall not be revealed, but the verdict and judgment shall be entered in accordance with the panel's findings of fact and conclusions of law. [TCR 86-109, 94-07]

2-878 Bifurcated jury trials.

1. The appellate Court may provide by rule for the bifurcation of any jury trial in a civil action sounding in tort so that the jury shall first hear evidence on, and render its verdict upon the issue of liability, and thereafter hear evidence on and render its verdict upon the issue of the amount of damages if liability has been found.
2. In such bifurcated trials, evidence of insurance coverage or similar agreements by third parties to pay any part of a judgment, and the nature and extent of such coverage or agreement shall be admissible and relevant to the issue of damages.
3. In any such cases not provided for by Court rule, the case may be determined in bifurcated proceedings as stated in subsections (1) and (2) of this Section by stipulation of the parties.
[TCR 86-109, 94-07]

TITLE 2
ARTICLE 9
PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

2-901 Seizure of person or property.
2-902 Receivers appointed by Tribal Courts.
2-903 Deposit in Court.
2-904 Process in behalf of and against persons not parties.
2-905 Security--proceedings against sureties.
2-906 Execution.

2-901 Seizure of person or property. At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by the law of the Tribe, existing at the time the remedy is sought. [TCR 86-109]

2-902 Receivers appointed by Tribal Courts. An action wherein a receiver has been appointed shall not be dismissed except by order of the Court. The practice in the administration of estates by receivers or by other similar officers appointed by the Court shall be in accordance with Tribal probate law, or, if none, then the practice heretofore followed in the Courts of the United States or as provided in rules promulgated by the Tribal Court. In all other respects the action in which the appointment of a receiver is sought or which is brought by or against a receiver is governed by this Act. [TCR 86-109, 94-07]

2-903 Deposit in Court. In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of Court, may deposit with the Court all or any part of such sum or thing. Money paid into Court under this Section shall be deposited and withdrawn in accordance with Tribal law detailing accounting procedures for the Court clerk's office, and if there be none, then in accordance with the Tribal procedure for the administration and accounting of federal grant monies, upon order of the Court. [TCR 86-109]

2-904 Process in behalf of and against persons not parties. When an order is made in favor of a person who is not a party to the action, he/she may enforce obedience to the order by the same process as if he/she were a party; and, when obedience to an order may be lawfully enforced against a person who is not a party, he/she is liable to the same process for enforcing obedience to the order as if he/she were a party. [TCR 86-109]

2-905 Security--proceedings against sureties. Whenever this Act or other Tribal law permits the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits him/herself to the jurisdiction of the Court and irrevocably appoints the clerk of the Court as his/her agent upon whom any papers affecting his/her liability on the bond or undertaking may be served. His/her liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the Court prescribes may be served on the clerk of the Court, who shall forthwith mail copies to the sureties if their addresses are known. Any surety authorized to give a bond or stipulation or other undertaking in either the federal Courts or the state Courts within the state within which any portion of the Tribal jurisdiction lies, and any individual approved by the Court who resides within the jurisdiction of Tribe (except officers of the Court or elected Tribal officials) shall be eligible to give such bond or stipulation, or undertaking in the Tribal Court under this Act or other Tribal law unless otherwise prohibited by Tribal law. [TCR 94-07]

2-906 Execution.

1. In General. Process to enforce a judgment for the payment of money shall be a writ of execution, unless the Court directs otherwise. In aid of the judgment or execution, the judgment creditor may obtain discovery from any person, including the judgment debtor, in the manner provided in this Act.
2. Against certain public officers. When a judgment otherwise authorized has been entered against a collector or other officer of revenue of the Tribe or against an officer, or employee, or agency of the Tribe in their official capacity; or if judgment is entered against an individual in his/her personal capacity who purported to act as an officer or employee of the Tribe, and the Court has given certificate of probable cause for his/her act wherein the Court determines that the individual had probable cause to believe that his/her action was authorized by the Tribe in his/her official capacity, execution shall not issue against the officer or his/her property but the final judgment shall be satisfied as may be provided by appropriation of such judgment (or such part thereof as the legislative body of the Tribe deems permissible considering the extent of available Tribal resources) from available Tribal funds. This Section is not intended, nor shall it be construed, as a waiver of sovereign immunity. [TCR 86-109]

TITLE 2
ARTICLE 9, PROVISONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS
SUBPART A
INJUNCTIONS

2-911 Injunction defined.
2-912 Cause for injunction--temporary restraining order.
2-913 Temporary restraining order; notice; hearing; duration.
2-914 Temporary restraining order--Service.
2-915 Preliminary injunction.
2-916 Preliminary injunction--criteria.
2-917 Form and scope of injunction or restraining order.
2-918 Employer and employee; interpleader; constitutional cases.
2-919 Security.
2-920 Use of affidavits.
2-921 Injunction by defendant.
2-922 Injunction is equitable.
2-923 Modification of preliminary injunction.
2-924 Modification of permanent injunction.
2-925 Injunctions tried to the Court.
2-926 Enforcement of restraining orders and injunctions.

2-911 Injunction defined. The injunction provided for by this subpart is a command to refrain from or to do a particular act for the benefit of another. It may be the final judgment in an action, or may be allowed as a provisional remedy, and when so allowed, it shall be by order. [TCR 86-109]

2-912 Cause for injunction--temporary restraining order. When it appears, by the verified complaint or an affidavit that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of some act, the commission or continuance of which, during the litigation, would produce injury to the plaintiff; or when, during litigation it appears that the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual, a temporary restraining order and preliminary injunction may be granted to restrain such act. And when, during the pendency of an action, it shall appear, by affidavit or proof, that the defendant threatens or is about to remove or dispose of his/her property with intent to defraud his/her creditors, or to render the judgment ineffectual, a temporary restraining order and preliminary injunction may be granted to restrain such removal or disposition by statute. [TCR 86-109]

2-913 Temporary restraining order; notice; hearing; duration. A temporary restraining order may be granted after commencement of the action without written or oral notice to the adverse party or his/her attorney only if:

1. It clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his/her attorney can be heard in opposition; and
2. The applicant's attorney certifies to the Court in writing the efforts, if any, which have been made to give the notice and the reasons supporting his/her claim that notice should not be required.

Temporary restraining orders should not be granted except in cases of extreme urgency. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; 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 ten 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 reasons for the extension shall be entered of 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 take precedence of all matters except older matters of the same character; and when the motion comes on for hearing, the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if he/she does not do so, the Court shall dissolve the temporary restraining order. On two day's notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that 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. [TCR 86-109]

2-914 Temporary restraining order--service. Temporary restraining orders shall be served in the same manner as provided for service of the summons and complaint. [TCR 86-109]

2-915 Preliminary injunction.

1. Notice. No preliminary injunction shall be issued without notice to the adverse party. Notice may be in the form of an order to appear at a designated time and place and show cause why a proposed preliminary injunction should not be issued, or in such form as the Court shall direct. The burden of showing the criteria for issuance of a preliminary injunction remains with the moving party.
2. Consolidation of hearing with trial on merits. Before or after the commencement of the hearing of an application for a preliminary injunction, the Court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial. This subsection shall be so construed and applied as to save the parties any rights they may have to trial by jury. [TCR 86-109]

2-916 Preliminary injunction--criteria. Unless a statute of the Tribe provides specifically for preliminary injunctive relief upon a showing of particular circumstances, no preliminary injunction shall be granted unless upon hearing the evidence presented by the parties the Court determines that:

1. There is a substantial likelihood that the moving party will eventually prevail on the merits of their claim for a permanent injunction or other relief; and
2. The moving party will suffer irreparable injury unless the preliminary injunction issues. Irreparable injury means an injury which cannot be adequately remedied by a judgment for money damages; and
3. The threatened injury to the moving party outweighs whatever damage or injury the proposed preliminary injunction may cause the opposing party; and
4. The preliminary injunction, if issued, would not be adverse to the public interest, and would not violate the public policy of the Tribe or the United States. [TCR 86-109]

2-917 Form and scope of injunction or restraining order. Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by references 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.

2-918 Employer and employee; interpleader; constitutional cases. This Article does not modify any statute of the Tribe relating to temporary restraining orders and preliminary injunctions in actions affecting employer and employee; or relating to preliminary injunctions in actions of interpleader or in the nature of interpleader; or any other case where temporary restraining orders or preliminary injunctions are expressly authorized or prohibited upon certain express terms or condition. [TCR 86-109]

2-919 Security.

1. No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the Court deems proper, for the payment of such costs, damages, and a reasonable attorney fee 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 Tribe or of an officer or agency thereof.
2. The provisions of Section 2-905 apply to a surety upon a bond or undertaking under this Section.
3. A party enjoined by a preliminary injunction may, at any time before final judgment, upon reasonable notice to the party who has obtained the preliminary injunction, move the Court for additional security, and if it appears that the surety in the undertaking has removed from the Tribal jurisdiction, or is insufficient, the Court may vacate the preliminary injunction unless sufficient surety be given in a reasonable time upon such terms as may be just and equitable. [TCR 86-109]

2-920 Use of affidavits. On the hearing for a restraining order or preliminary injunction, each party may submit affidavits which shall be filed as a part of the record. [TCR 86-109]

2-921 Injunction by defendant. A defendant may obtain a temporary restraining order or preliminary injunction upon filing his/her answer containing an appropriate counterclaim. He/she shall proceed in the manner hereinbefore prescribed. [TCR 86-109]

2-922 Injunction is equitable. Relief by way of a restraining order, preliminary, or permanent injunction is of equitable cognizance and shall be issued or refused in the sound discretion of the Court. Relief by way of injunction shall be denied where the moving party may be adequately compensated for his/her injuries in money damages. The Tribal Court shall not enjoin the enforcement of the Tribal tax laws or the collection of Tribal taxes except to the extent that such relief is specifically provided for in those tax laws. No injunction shall issue to control the discretion or action of a governmental officer or employee when such officer or employee had been delegated the authority to exercise his/her discretion in determining how to act upon the subject matter, and is acting or refusing to act in a manner not prohibited by Tribal law or the Indian Civil Rights Act. [TCR 86-109, 94-07]

2-923 Modification of preliminary injunction. If the preliminary injunction be granted, the defendant, at any time before the trial, may apply, upon notice, to the Court to vacate or modify the same. The application may be made upon the complaint and affidavits upon which the injunction is granted, or upon affidavits on the part of the party enjoined, with or without answer. The order of the judge, allowing, dissolving or modifying an injunction, shall be returned to the office of the clerk of the Court and recorded. [TCR 86-109]

2-924 Modification of permanent injunction. A final judgment containing a permanent injunction may be modified or dissolved by separate action upon a showing that the facts and circumstances have changed to the extent that the injunction is no longer just and equitable, or that the injunction is no longer needed to protect the rights of the parties. [TCR 86-109]

2-925 Injunctions tried to the Court. All injunctive actions shall be tried to the Court and not to a jury unless the Court orders an advisory jury pursuant to Section 2-804(3) of this Act.

2-926 Enforcement of restraining orders and injunctions. A restraining order or injunction granted by a judge may be enforced as the act of the Court. Disobedience of any injunction may be punished as a contempt, by the Court or any judge who might have granted it. An attachment may be issued by the Court or judge, upon being satisfied, by affidavit or testimony, of the breach of the injunction, against the party guilty of the same, who may be required to make immediate restitution to the party injured, and give further security to obey the injunction; or, in default thereof, he/she may be committed to close custody, until he/she shall fully comply with such requirements, or be otherwise legally discharged, or be punished by fine not exceeding two hundred dollars ($200.00) for each day of, or separate act of, contempt, to be paid into the Court fund, or by confinement in the Tribal jail for not longer than sixty days.

TITLE 2
ARTICLE 9, PROVISONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS
SUBPART B
REPLEVIN

2-931 Order of delivery--procedure.
2-932 Penalty for damage of property subject to order of delivery.
2-933 Undertaking in replevin.
2-934 Replevin bond--value.
2-935 Order of delivery.
2-936 Order returnable.
2-937 Execution or order.
2-938 Re-delivery on bond.
2-939 Exception to sureties.
2-940 Proceedings on failure to prosecute action.
2-941 Judgment--damage--attorney fees.
2-942 Officer may break into building.
2-943 Compelling delivery by attachment.
2-944 Improper issue of order of delivery.
2-945 Joinder of cause of action for debt--stay of judgment.

2-931 Order of delivery--procedure.

1. The plaintiff in an action to recover the possession of specific personal property may claim the delivery of the property at the commencement of suit, as provided herein.
   A. The complaint must allege facts which show (i) a description of the property claimed; (ii) that the plaintiff is the owner of the property or has a special ownership or interest therein, stating the facts in relation thereto, and that he/she is entitled to the immediate possession of the property; (iii) that the property is wrongfully detained by the defendant; (iv) the actual value of the property, provided that when several articles are claimed, the value of each shall be stated as nearly as practicable; (v) that the property was not taken in execution on any order or judgment against said plaintiff, or for the payment of any tax, fine or amercement assessed against him/her, or by virtue of an order of delivery issued under this Act, or any other mesne or final process issued against said plaintiff; or, if taken in execution or on any order or judgment against the plaintiff, that it is exempt by law from being so taken; and, (vi) the prayer for relief requests that the Court issue an order for the immediate delivery of the property.
   B. The above allegations are verified by the party or, when the facts are within the personal knowledge of his/her agent or attorney and this is shown in the verification, by said agent or attorney.
   C. A notice shall be issued by the clerk and served on the defendant with the summons which shall notify the defendant that an order of delivery of the property described in the complaint is sought and that the defendant may object to the issuance of such an order by a written objection which is filed with the clerk and delivered or mailed to the plaintiff's attorney within five days of the service of the summons. In the event that no written objection is filed within the five-day period, no hearing is necessary and the Court clerk shall issue the order of delivery. Should a written objection be filed within the five-day period specified, the Court shall, at the request of either party, set the matter for prompt hearing. At such hearing, the Court shall proceed to determine whether the order for prejudgment delivery of the property should issue according to the probable merit of the plaintiff's complaint. Provided, however, that no order of delivery may be issued until an undertaking has been executed pursuant to Section 2-933 of this Act.

D. Nothing in this Act contained shall prohibit a party from waiving his/her right to a hearing or from voluntarily delivering the goods to the party seeking them before the commencement of the proceedings or at anytime after institution thereof.

2. Where the notice that is required by subsection (1) of this Section cannot be served on the defendant but the judge finds that a reasonable effort to serve him/her was made and at the hearing the plaintiff has shown the probable truth of the allegations in his/her complaint, the Court may issue an order for the prejudgment delivery of the property. If an order for the prejudgment delivery of the property is issued without actual notice being given the defendant, the defendant may move to have said order dissolved and if he/she does not have possession of the property, for a return of the property. Notice of the right to move for return of said property shall be contained in the order for seizure and delivery of such property which shall be served upon the defendant or left in a conspicuous place where the property was seized, and the chief of the Tribal police, or Bureau of Indian Affairs police, shall hold said property in such cases for three working days prior to delivery to the plaintiff in order to give the defendant a reasonable opportunity to move for the return of such property. Notice of said motion with the date of the hearing shall be served upon the attorney for the plaintiff in the action. The motion shall be heard promptly, and in any case within ten days after the date it is filed. The Court must grant the motion unless, at the hearing on defendant's motion, the plaintiff proves the probable truth of the allegations contained in his/her complaint. If said motion and notice is filed before the chief of the Tribal police or Bureau of Indian Affairs police, turns the property over to the plaintiff, the chief of the Tribal police, or Bureau of Indian Affairs police, shall retain control of the property pending the hearing on the motion.

3. The Court may, on request of the plaintiff, order the defendant not to conceal, damage or destroy the property or a part thereof and not to remove the property or a part thereof from the Tribal jurisdiction pending the hearing on plaintiff's request for an order for the prejudgment delivery of the property, and said order may be served with the summons. [TCR 86-109, 94-07]

2-932 Penalty for damage of property subject to order of delivery. Any person who willfully and knowingly damages property in which there exists a valid right to issuance of an order of delivery, or on which such order has been sought under the provisions of this Act, or who conceals it, with the intent to interfere with enforcement of the order, or who removes it from the jurisdiction of the Court with the intention of defeating enforcement of an order of delivery, or who willfully refuses to disclose its location to an officer charged with executing an order for its delivery, or, if such property is in his/her possession, willfully interferes with the officer charged with executing such writ, may be held in civil contempt of Court, and shall be guilty of an offense, and if convicted of such offense shall be subject to a fine of not more than five hundred dollars ($500.00) and imprisonment for a term of not more than six months, or both; and, in addition to such civil and criminal penalties, shall be liable to the plaintiff for double the amount of damage done to the property together with a reasonable attorney's fee to be fixed by the Court, which damages and fee shall be deemed based on tortious conduct and enforced accordingly.
[TCR 86-109]

2-933 Undertaking in replevin. The order shall not be issued until there has been executed by one or more sufficient sureties of the plaintiff, to be approved by the Court, an undertaking in not less than double the value of the property as stated in the complaint to the effect that the plaintiff shall duly prosecute the action, and pay all costs and damages which may be awarded against him/her, including attorney's fees and, if the property be delivered to him/her, that he/she will return the same to the defendant if a return be adjudged; provided that where the Tribe or its agents or subdivisions is party plaintiff, an undertaking in replevin shall not be required of the plaintiff, but a writ shall issue upon complaint duly filed as provided

by law. The undertaking shall be filed with the clerk of the Court, and shall be subject to the provisions of Section 2-905 of this Act. [TCR 86-109]

2-934 Replevin Bond--value. On application of either party which is made at the time of executing the replevin bond or the redelivery bond, or at a later date with notice to the adverse party, the Court may hold a hearing to determine the value of the property which the plaintiff seeks to replevy. If the value as determined by the Court is different from that stated in the complaint, the value as determined by the Court shall control for the purpose of Sections 2-933 and 2-938 of this Act. [TCR 86-109]

2-935 Order of delivery. The order for the delivery of the property to the plaintiff shall be addressed and delivered to the chief of the Tribal police or to the Bureau of Indian Affairs police. It shall state the names of the parties, the Court in which the action is brought, and command the chief of the Tribal police or the Bureau of Indian Affairs police to take the property, describing it, and deliver it to the plaintiff as prescribed in this Act, and to make return of the order on a day to be named therein. [TCR 86-109, 94-07]

2-936 Order returnable. The return day of the order of delivery, when issued at the commencement of the suit, shall be the same as that of the summons; when issued afterwards, it shall be ten days after it is issued. [TCR 86-109]

2-937 Execution of order. The chief of the Tribal police or the Bureau of Indian Affairs police, shall execute the order by taking the property therein mentioned. He/she shall also deliver a copy of the order to the person charged with the unlawful detainer of the property, or leave such copy at his/her usual place of residence, or at the place such property was seized. [TCR 86-109, 94-07]

2-938 Re-delivery on bond. If, within three working days after service of the copy of the order, there is executed by one or more sufficient sureties of the defendant, to be approved by the Court or the chief of the Tribal police or the Bureau of Indian Affairs police, an undertaking to the plaintiff, in not less than double the amount of the value of the property as stated in the affidavit of the plaintiff, to the effect that the defendant will deliver the property to the plaintiff, if such delivery be adjudged, and will pay all costs and damages that may be awarded against him/her, the chief of the Tribal police or the Bureau of Indian Affairs police shall return the property to the defendant. If such undertaking be not given within three working days after service of the order, the Chief of the Tribal police or the Bureau of Indian Affairs police shall deliver the property to the plaintiff. [TCR 86-109, 94-07]

2-939 Exception to sureties.

2-940 Proceedings on failure to prosecute action. If the property has been delivered to the plaintiff, and judgment rendered against him/her, or his/her action be dismissed, or if he/she otherwise fails to prosecute his/her action to final judgment, the Court shall, on application of the defendant or his/her attorney, proceed to inquire into the right of property, and right of possession of the defendant to the property taken. [TCR 86-109]

2-941 Judgment--damages--attorney fees. In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession, or for the recovery of possession, or the value thereof in case a delivery cannot be had, and of damages for the detention. If the property has been delivered to the plaintiff, and the defendant claim a return thereof, judgment for the defendant may be for a return of the property, or the value thereof in case a return cannot be had, and damages for taking and withholding the

same. The judgment rendered in favor of the prevailing party in such action may include a reasonable attorney fee to be set by the Court, to be taxed and collected as costs. [TCR 86-109]

2-942 Officer may break into building. The chief of the Tribal police or other law enforcement officer, in the execution of the order of delivery issued by the Tribal Court, may break open any building or enclosure in which the property claimed, or any part thereof, is concealed, upon probable cause to believe that the property is concealed therein, but not until he/she has been refused entrance into said building or enclosure and the delivery of the property, after having demanded the same, or if no person having charge thereof is present. [TCR 86-109, 94-07]

2-943 Compelling delivery by attachment. In an action to recover the possession of specific personal property, the Court may for good cause shown, before or after judgment, compel the delivery of the property to the officer or party entitled thereto by attachment, and may examine either party as to the possession or control of the property. Such authority shall only be exercised in aid of the foregoing provisions of this subpart. [TCR 86-109]

2-944 Improper issue of order of delivery. Any order for the delivery of property issued under this subpart without the affidavit and undertaking required, shall be set aside and the plaintiff shall be liable in damages to the party injured. [TCR 86-109]

2-945 Joinder of cause of action for debt--stay of judgment. In any action for replevin in the Tribal Court, it shall be permissible for the plaintiff to join with the claim in replevin, a claim founded on debt claimed to be owing to the plaintiff if the debt shall be secured by a lien upon the property sought to be recovered in the claim in replevin. In such cases, the execution of the judgment for debt shall be stayed pending the sale of the property and the determination of the amount of debt remaining unpaid after the application of the proceeds of the sale thereto. [TCR 86-109]

TITLE 2
ARTICLE 9, PROVISONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS
SUBPART C
ATTACHMENT

2-951 Grounds for attachment.
2-952 Attachment affidavit.
2-953 Attachment bonds.
2-954 Order of attachment.
2-955 When returnable.
2-956 Order of execution.
2-957 Execution of attachment order.
2-958 Service of order.
2-959 Re-delivery on bond.

2-951 Grounds for attachment. The plaintiff in a civil action for the recovery of money may, at or after the commencement thereof, have an attachment against the property of the defendant, and upon proof of any of the following grounds:

1. When the defendant, or one of several defendants, is a foreign corporation, or a nonresident of the Tribal jurisdiction (but no order of attachment shall be issued on this clause for any claim other than a debt or demand arising upon contract, judgment or decree, unless the claim arose wholly within the Tribal jurisdiction); or
2. When the defendant, or one of several defendants, has absconded with intention to defraud his/her creditors; or
3. Has left the Tribal jurisdiction to avoid the service of summons; or
4. So conceals him/herself that a summons cannot be served upon him/her; or
5. Is about to remove his/her property, or a part thereof, out of the jurisdiction of the Court with the intent to defraud his/her creditors; or
6. Is about to convert his/her property, or a part thereof, into money, for the purpose of placing it beyond the reach of his/her creditors; or
7. Has property or rights in action, which he/she conceals; or
8. Has assigned, removed or disposed of, or is about to dispose of, his/her property, or a part thereof, with the intent to defraud, hinder or delay his/her creditors; or
9. Fraudulently contracted the debt, or fraudulently incurred the liability or obligations for which the suit has been brought; or
10. Where the damages for which the action is brought are for injuries arising from the commission of a criminal offense; or
11. When the debtor has failed to pay the price or value of any article or thing delivered, which by contract he/she was bound to pay upon delivery; or
12. When the action is brought by the Tribe, or its officers, agents, or political agencies or subdivisions for the purpose of collection of any Tribal tax, levy, charge, fee, assessment, rental, or debt arising in contract or by statute and owed to the Tribe. [TCR 86-109]

2-952 Attachment affidavit. An order of attachment may be issued by the Court when:

1. There is filed in the office of the Court clerk a civil complaint stating a claim for relief and an application that the Court issue an order of attachment which states facts which show:
   A. The nature of the plaintiff's claim;
   B. That it is just;
   C. The amount which the affiant believes the plaintiff ought to recover; and,

D. The existence of some of the grounds for an attachment enumerated in Section 2-951 of this subpart.

2. The application must be verified by the plaintiff, or, where his/her agent or attorney has personal knowledge of the facts, by said agent or attorney.
3. The defendant has been served with a notice, issued by the clerk, which shall notify the defendant that an order of attachment of property is requested and that he/she may object to the issuance of such an order by a written objection which is filed with the Court clerk and mailed or delivered to the plaintiff's attorney within five days of the receipt of the notice. A copy of plaintiff's application shall be attached to and served with the notice, and the notice and application may be served with the summons in the action.
4. If no written objection is filed within the five day period, no hearing is necessary and the clerk may issue the order of attachment. If a written objection is filed within the five day period, the Court shall, at the request of either party, set the matter for a prompt hearing with notice to the adverse party. If the plaintiff proves the probable merit of his/her cause and the truth of the matters asserted in his/her application for an order of attachment, the Court may issue the order of attachment. Provided, however, before an order of attachment is issued by either the Court or the clerk, the plaintiff has executed an undertaking pursuant to Section 2-953 of this Act. The Tribe and its agents shall not be required to execute an undertaking.
5. If the Court finds that the defendant cannot be given notice as provided herein, although a reasonable effort was made to notify him/her, but at the hearing the plaintiff proves the probable merit of his/her claim and the truth of the matters asserted in his/her application, the Court may issue the order of attachment. The defendant may subsequently move to have the attachment vacated as provided in Section 2-991.19 of this Act. [TCR 86-109]

2-953 Attachment bonds. The attachment bond for the benefit of the party whose property is attached shall be in such form and in such amount, not less than double the amount of the plaintiff's claim, as the Court shall direct, and shall guarantee payment of all damages, costs, and reasonable attorney's fees incurred as a result of a wrongful attachment. No bond shall be required of the Tribe. [TCR 86-109]

2-954 Order of attachment. The order of attachment shall be directed and delivered to the chief of the Tribal police. It shall require him/her to attach the lands, tenements, goods, chattels, stocks, rights, credit, moneys and effects of the defendant within the Tribal jurisdiction not exempt by law from being applied to the payment of the plaintiff's claim, or so much thereof as will satisfy the plaintiff's claim, to be stated in the order as in the affidavit, and the probable cost of the action not exceeding one hundred dollars ($100.00). [TCR 86-109, 94-07]

2-955 When returnable. The return day of the order of attachment when issued at the commencement of the action, shall be the same as that of the summons, and otherwise within twenty days of the date of issuance. [TCR 86-109]

2-956 Order of execution. Where there are several orders of attachment against the defendant, they shall be executed in the order in which they are received by the chief of the Tribal police. [TCR 86-109, 94-07]

2-957 Execution of attachment order. The order of attachment shall be executed by the chief of the Tribal police without delay. He/she shall go to the place within the Tribal jurisdiction where the defendant's property may be found, and declare that, by virtue of said order, he/she attaches said property at the suit of the plaintiff; and the officer shall make a true inventory and appraisement of all the property attached, which shall be signed by the officer and returned with the order, leaving a copy of said inventory with the person or in the place from which the property was seized. [TCR 86-109, 94-07]

2-958 Service of order.

1. When the property attached is real property, the officer shall leave a copy of the order with the occupant, or, if there be no occupant, then a copy of the order shall be posted in a conspicuous place on the real property, where it is personal property, and he/she can get possession, he/she shall take such into his/her custody, and hold it subject to the order of the Court.
2. When the property attached is real property, third parties shall not be affected until a copy of the attachment order and the legal description of the real property attached shall be filed and placed of record in the land tract book maintained by the Court clerk. [TCR 86-109]

2-959 Re-delivery on bond. The chief of the Tribal police shall re-deliver the property to the person in whose possession it was found, upon the execution by such person, in the presence of the chief of the Tribal police, an undertaking to the plaintiff, with one or more sufficient sureties, to the effect that the parties to the same are bound, in double the appraised value thereof, that the property, or its appraised value in money, shall be forthcoming to answer the judgment of the Court in the action. [TCR 86-109, 94-07]

TITLE 2
ARTICLE 9, PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS
SUBPART D
GARNISHMENT
(As adopted November 17, 2010)

2-961 Garnishment in aid of execution; when issued; procedure; court order; continuing lien; when invalid.
2-962 Priority of garnishments and liens.
2-963 Service upon garnishee; notice; hearing.
2-964 Answer; interrogatories; response; objections; contempt; hearing.
2-965 Exemptions from garnishment.

2-961 Garnishment in aid of execution; when issued; procedure; court order; continuing lien; when invalid.

1. In all cases when a judgment has been entered by the Court, the judgment creditor or his or her agent or attorney may file an affidavit setting forth the amount due on the judgment, interest, and costs with the clerk and that he/she has good reason to and does believe that any person, partnership, limited liability company, or corporation, naming him, her, or it, has property of and is indebted to the judgment debtor. Upon the filing of said affidavit, the clerk shall issue a summons which shall set forth the amount due on the judgment, interest, and costs as shown in the affidavit and require such person, partnership, limited liability company, or corporation, as garnishee, to answer written interrogatories to be furnished by the judgment creditor with his/her affidavit and to be attached to such summons. The summons shall be returnable within ten days from the date of its issuance and shall require the garnishee to answer the attached interrogatories within ten days from the date of service upon him/her.
2. Except when wages are involved, the garnishee shall hold the property of every description and the credits, as defined in this Subpart D, of the judgment debtor in his/her possession or under his/her control at the time of the service of the summons and interrogatories until the further order of the Court. If the only property in the possession or under the control of the garnishee at the time of the service of the summons and interrogatories is credits of the judgment debtor and the amount of such credits is not in dispute by the garnishee, then such garnishee shall only hold the credits of the judgment debtor in his/her possession or under his/ her control at the time of the service of the summons and interrogatories to the extent of the amount of the judgment, interest, and costs set forth in the summons until further order of the Court. When wages are involved, the garnishee shall pay to the employee-judgment debtor the amount of earnings exempted from garnishment by Section 2-965(2), and any earnings remaining after such payment shall be retained by the garnishee until further order of the Court.
3. A garnishee holding only credits of the judgment debtor may pay the money owing to the judgment debtor by him into Court. He shall be discharged from liability to the judgment debtor for any money so paid not exceeding the judgment creditor's claim.
4. A garnishee shall not be subjected to costs beyond those caused by his resistance of the claim against him; and if he discloses the property under his control, or the true amount owing by him, and delivers or pays the same according to the order of the Court, he shall be allowed his costs.
5. If it appears from the answer of the garnishee that the judgment debtor is an employee of the garnishee, that the garnishee otherwise owed earnings to the judgment debtor when the garnishment summons was served, or that earnings would be owed within sixty days thereafter and there is not a successful written objection to the summons or interrogatories, on application by the judgment

creditor, the Court shall order that the nonexempt earnings, if any, withheld by the garnishee after service of the summons be transferred to the Court for delivery to the judgment creditor who is entitled to such earnings.

6. Except for garnishments in support of a person, the payments may be made payable to the judgment creditor or assignee and shall be forwarded to the issuing court to record the judgment payment prior to the Court delivering the payment to the judgment creditor or assignee. The Court shall, upon application of the judgment creditor, further order that the garnishment is a continuing lien against the nonexempt earnings of the judgment debtor. An order of continuing lien on nonexempt earnings entered pursuant to this Section shall require the garnishee to continue to withhold the nonexempt earnings of the judgment debtor for as long as the continuing lien remains in effect.
7. Beginning with the pay period during which the summons was served and while the continuing lien remains in effect, the garnishee shall deliver the nonexempt earnings to the Court for each pay period or on a monthly basis if the garnishee so desires and shall deliver to the judgment debtor his or her exempt earnings for each pay period.
8. A continuing lien ordered pursuant to this Section shall be invalid and shall have no force and effect upon the occurrence of any of the following:
   A. The underlying judgment is satisfied in full or vacated or expires;
   B. The judgment debtor leaves the garnishee's employ for more than sixty days;
   C. The judgment creditor releases the garnishment;
   D. The proceedings are stayed by a court of competent jurisdiction, including the United States Bankruptcy Court;
   E. The judgment debtor has not earned any nonexempt earnings for at least sixty days; or
   F. The Court orders that the garnishment be quashed.
9. "Credit" as used herein shall mean any money of the judgment debtor held by the garnishee or any liquidated and undisputed amount of money owed by the garnishee to the judgment debtor. [TCR 11-26]

2-962 Priority of garnishments and liens.

1. To determine priority, garnishments and liens shall rank according to time of service.
2. Garnishments, liens, and wage assignments which are not for the support of a person shall be inferior to wage assignments for the support of a person. Garnishments, which are not for the support of a person and liens, shall be inferior to garnishments for the support of a person.
3. Only one order of continuing lien against earnings due the judgment debtor shall be in effect at one time. If an employee's wages are already being garnished pursuant to a continuing lien at the time of service of a garnishment upon an employer, the answer to garnishment interrogatories shall include such information along with the date of termination of such continuing lien and the title of the case from which such garnishment is issued. Except as provided in subsection 2 of this Section, a continuing lien obtained pursuant to this Section shall have priority over any subsequent garnishment or wage assignment. [TCR 11-26]

2-963 Service upon garnishee; notice; hearing.

1. The summons, interrogatories and order of garnishment shall be served upon the garnishee in the manner provided for service of a summons in a civil action.
2. The judgment creditor or his or her agent or attorney shall send to the judgment debtor by certified mail to the last known address of the judgment debtor a copy of the summons, interrogatories and order of garnishment. Judgment creditor shall include with the summons a notice to the judgment

debtor regarding the exemptions from garnishment and the judgment debtor's right to have a hearing to determine whether any exemptions apply to the proposed garnishment.

3. If the judgment debtor in a garnishment proceeding requests a hearing on exemptions, the Court shall grant the hearing within ten days of the request.

2-964 Answer; interrogatories; response; objections; contempt; hearing.

1. The garnishee shall answer, under oath, all the interrogatories put to him touching the property of every description and credits of the defendant in his possession or under his control at the time of the service of the summons and interrogatories, and he shall disclose truly the amount owing by him to the defendant, whether due or not, and, in case of a corporation, any stock therein held by or for the benefit of the defendant, at the time of the service of the summons and interrogatories.
2. A person who fails to respond or object to a summons and garnishment interrogatories served in accordance with this Subpart or make payment in accordance with this Subpart shall be subject to an action for contempt of Court. Such person, if found in contempt, shall be liable in the full amount of wages or credits of the judgment debtor held by them up to the full amount of the judgment, or 10% of the judgment, whichever is greater, plus judgment creditor's attorney fees and costs to bring the contempt action.
3. In lieu of responding to the garnishment interrogatories, a garnishee may file an objection(s) to the garnishment interrogatories within the time provided for the response thereto. The judgment creditor, the judgment debtor, or the garnishee may request a hearing with the Court to determine the validity of the asserted objections. The garnishee shall have the burden of proving the validity of its objections. The Court may award attorney fees and costs should the garnishee's objections be overruled.
4. After receipt of the garnishee's answer to garnishment interrogatories, the judgment creditor may request a hearing to determine the completeness and/or truthfulness of the garnishee's responses. The judgment creditor shall have the burden of proving that garnishee's responses to interrogatories are incomplete and/or untruthful. Should the garnishee's responses be upheld, the Court may award attorney fees and costs to the garnishee. The Court may combine a hearing under this subsection with a hearing requested pursuant to subsection 3 of this Section.
5. In its capacity as an employer, the Tribe, its officers and managers shall comply with the requirements of this Subpart. However, the Tribe shall not be subject to any fine or fee provided for in this Subpart. [TCR 11-26]

2-965 Exemptions from garnishment.

1. Credits held by a garnishee shall not be subject to execution where held in an account that enjoys any tax-exempt status under federal law for the purpose of providing for the judgment debtor's retirement from employment. All other credits held by a garnishee shall be fully subject to execution.
2. Judgment debtor's wages held or owed by a garnishee shall be exempt from execution up to 75% of the total wages owed or held. In determining the total wages under this subsection, amounts subject to a prior or subsequent order or garnishment in support of a minor child shall not be included. [TCR 11-26]

TITLE 2
ARTICLE 9, PROVISONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS
SUBPART E
PROVISIONS RELATING TO ATTACHMENT AND GARNISHMENT

(Reserved For Future Provisions Relating To Both Attachment And Garnishment.)

TITLE 2
ARTICLE 9, PROVISONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS
SUBPART F
RECEIVERS

2-992.1 Appointment of receiver.
2-992.2 Persons ineligible.
2-992.3 Oath and bond.
2-992.4 Powers of receiver.
2-992.5 Investment of funds.
2-992.6 Disposition of property litigated.
2-992.7 Punishment for disobedience of Court.
2-992.8 Vacation of appointment by appellate Court.

2-992.1 Appointment of receiver. A receiver may be appointed by the appellate Court, the Tribal Court, or any judge of either:

1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his/her claim, or between partners or others jointly owning an interest in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed or materially injured.
2. In any action by a mortgagee for the foreclosure of his/her mortgage and sale of the mortgaged property, where it appears that the mortgaged property is in danger of being lost, removed or materially injured, or that the condition of the mortgage has not been performed, and that the property is probably insufficient to discharge the mortgage debt.
3. After judgment, to carry the judgment into effect.
4. After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or in proceeding in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply his/her property in satisfaction of the judgment.
5. In the cases provided in this Act, and by special statutes, when a corporation has been dissolved, or is insolvent or in imminent danger of insolvency, or has forfeited its corporate rights.
6. In all other cases where receivers should be appointed to protect the property and rights of the parties thereto in dispute by the usages of the Court in equity. [TCR 86-109, 94-07]

2-992.2 Persons ineligible. No party, or attorney, or person so interested in an action shall be appointed receiver therein except by consent of all parties thereto. [TCR 86-109]

2-992.3 Oath and bond. Before entering upon his/her duties, the receiver must be sworn to perform them faithfully, and with one or more sureties, approved by the Court, execute an undertaking to such person and in such sum as the Court shall direct, to the effect that he/she will faithfully discharge the duties of receiver in the action and obey the orders of the Court therein. [TCR 86-109]

2-992.4 Powers of receiver. The receiver has, under the control of the Court, power to bring and defend actions in his/her own name, as receiver; to take and keep possession of the property, to receive rents, to collect debts, to compound for and compromise the same, to make transfers, and generally to do such act respecting the property as the Courts may authorize. [TCR 86-109]

2-992.5 Investment of funds. Funds in the hands of a receiver may be invested upon interest, by order of the Court; but no such order shall be made, except upon the consent of all the parties to the action, or except by order of the Court when the principal and interest earned thereon are guaranteed by the federal government and may be withdrawn within a reasonable time. [TCR 86-109]

2-992.6 Disposition of property litigated.

1. When it is admitted, by the pleadings or oral or written examination of a person, that he/she has in his/her possession or under his/her control any non-exempt money or other thing capable of delivery, which is held by him/her as trustee for a party, or which belongs or is due to a party, the Court may order the same to be deposited in Court or delivered to such party, with or without security, subject to the further direction of the Court.
2. Any person abiding by an order of the Court in such cases and paying or delivering the money or other property subject to said order into Court, shall not thereafter be liable to the party for whom he/she held as trustee, or to whom the money or property belonged or was due, in any civil action for the collection or return of the property or money delivered or paid into Court.
3. Such order may be made by ordering the party to procure the deposit or payment into Court of the property, which order may be enforced by contempt, or the Court, upon proper application, may order the person holding said property to be served with summons and brought into the action as a special defendant for the sole purpose of determining the nature and amount of property in his/her possession subject to payment into Court under this Section, and ordering said person to pay or deliver such non-exempt property into Court. After such payment has been made, the person shall be dismissed from the action.
4. In cases where judgment has been obtained against the party whose property or money is to be paid into Court, it is not necessary to formally appoint a receiver for the money or property paid into Court under this Section, but the Court clerk shall act as receiver, as an aid to the enforcement of judgment, and shall pay such money or deliver such property over to the person entitled thereto in conformity with the order of the Court. [TCR 86-109]

2-992.7 Punishment for disobedience of Court. Whenever, in the exercise of its authority, the Court shall have ordered the deposit or delivery of money or other thing, and the order is disobeyed, the Court, besides punishing the disobedience as for contempt, may make an order requiring the chief of the Tribal police to take the money, or thing, and deposit or deliver it, in conformity with the direction of the Court. [TCR 86-109, 94-07]

2-992.8 Vacation of appointment by appellate Court. In all cases in the appellate Court in which a receiver has been appointed, or refused, by any justice of the appellate Court, the party aggrieved may within ten days thereafter have the right to file a motion to vacate the order refusing or appointing such receiver, and hearing on such motion may be had before the appellate Court, if the same be in session, or before a quorum of the justices of said Court in vacation, at such time and place as the said Court or the justices thereof may determine, and pending the final determination of the cause, if the order was one of the appointment of a receiver, the moving party shall have the right to give bond with good and sufficient sureties, and in such amount as may be fixed by order of the Court or a justice thereof, conditioned for the due prosecution of such case, and the payment of all costs and damages that may accrue to the Tribe, or any officer, or person by reason thereof, the authority of any such receiver shall be suspended pending a final determination of such cause, and if such receiver shall have taken possession of any property in controversy in said action, the same shall be surrendered to the rightful owner thereof, upon the filing and approval of said bond. [TCR 86-109, 94-07]

TITLE 2
ARTICLE 9, PROVISONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS
SUBPART G
EMINENT DOMAIN

2-993.1 Who may exercise authority.
2-993.2 What property may be condemned by eminent domain.
2-993.3 Condemnation of property.
2-993.4 Complaint.
2-993.5 Process in eminent domain.
2-993.6 Appearance or answer.
2-993.7 Amendment of pleadings.
2-993.8 Substitution of parties.
2-993.9 Dismissal of action.
2-993.10 Deposit and its distribution.
2-993.11 Costs.

2-993.1 Who may exercise authority. The Tribal legislative body, and any officer or agency of the Tribe specifically authorized to do so by statute may obtain real or personal property by eminent domain proceedings in conformance with the Tribal Constitution, the Indian Civil Rights Act, and this subpart. [TCR 86-109]

2-993.2 What property may be condemned by eminent domain. Except property made exempt from eminent domain by the Tribal Constitution and statutes, all property real and personal within the Tribal jurisdiction, not owned by the Tribe and its agencies, shall be subject to eminent domain except title to property held in trust by the United States for an Indian or Tribe, or property held by an Indian or Tribe subject to a restriction against alienation imposed by the United States unless the United States has consented to the eminent domain of said property. Any lease or Tribally granted property conveyed by Tribal or federal law shall be subject to eminent domain in conformance with the Tribal Constitution and statutes and the Indian Civil Rights Act. [TCR 86-109]

2-993.3 Condemnation of property.

1. Applicability of other rules. The Rules of Civil Procedure for the Courts of the Tribe govern the procedure for the condemnation of real and personal property under the power of eminent domain, except as otherwise provided in this subpart.
2. Joinder of properties. The plaintiff may join in the same action one or more separate pieces of property, whether in the same or different ownership and whether or not sought for the same use.
3. Amount to be paid. The owner shall be entitled to receive just compensation for all property or rights to property taken from him/her in eminent domain proceedings. [TCR 86-109]

2-993.4 Complaint.

1. Caption. The complaint shall contain a caption as provided in Section 2-210(1), except that the plaintiff shall name as defendants the property, designated generally by kind, quantity, and location, and at least one of the owners of some part of or interest in the property.
2. Contents. The complaint shall contain a short and plain statement of the authority for the taking, the use for which the property is to be taken, a description of the property sufficient for its identification, the interests to be acquired, and as to each separate piece of property a designation of the defendants who have been joined as owners thereof or of some interest therein. Upon the commencement of the action, the plaintiff need join as defendants only the persons having or claiming an interest in the property whose names are then known, but prior to any hearing involving the compensation to be paid for a piece of property, the plaintiff shall add as defendants

all persons having or claiming an interest in that property whose names can be ascertained by a reasonably diligent search of the records, considering the character and value of the property involved and the interest to be acquired, and also those whose names have otherwise been learned. All others may be made defendants under the designation "Unknown Owners." Process shall be served as provided in Section 2-993.5 of this subpart upon all defendants, whether named as defendants at the time of the commencement of the action or subsequently added, and a defendant may answer as provided in Section 2-993.6 of this subpart. The Court meanwhile may order such distribution of a deposit as the facts warrant.

3. Filing. In addition to filing the complaint with the Court, the plaintiff shall furnish to the clerk at least one copy thereof for the use of the defendants and additional copies at the request of the clerk or of a defendant. [TCR 86-109]

2-993.5 Process in eminent domain.

1. Notice; delivery. Upon the filing of the complaint the plaintiff shall forthwith deliver to the clerk joint or several notices directed to the defendants names or designated in the complaint. Additional notices directed to defendants subsequently added shall be so delivered. The delivery of the notice and its service have the same effect as the delivery and service of the summons.
2. Same; form. Each notice shall state the Court, the title of the action, the name of the defendant to whom it is directed, that the action is to condemn property, a description of his/her property sufficient for its identification, the interest to be taken, that the defendant may serve upon the plaintiff's attorney an answer within twenty days after the service of the notice, and that the failure so to serve an answer constitutes a consent to the taking and to the authority of the Court to proceed to hear the action and to fix the compensation. The notice shall conclude with the name of the plaintiff's attorney and an address where he/she may be served. The notice need contain a description of no other property than that to be taken from the defendants to whom it is directed.
3. Service of notice.
   A. Personal service. Personal service of the notice shall be made in accordance with the rules for personal service of summons upon a defendant who resides within the United States or its territories or insular possessions and whose residence is known. A copy of the complaint may, but need not, be served.
   B. Service by publication. Upon the filing of a certificate of the plaintiff's attorney stating that he/she believes a defendant cannot be personally served, because after diligent inquiry his/her place of residence cannot be ascertained by the plaintiff or, if ascertained, that it is beyond the territorial limits of personal service as provided in this Section, service of the notice shall be made on that defendant by publication in a newspaper published in the county where the property is located, or if there is no such newspaper, then in a newspaper having a general circulation where the property is located, once a week for not less than three successive weeks. Prior to the last publication, a copy of the notice shall also be mailed to a defendant who cannot be personally served as provided in this Section but whose place of residence is then known. Unknown owners may be served by publication in a like manner by a notice addressed to "Unknown Owners."
   C. When publication service complete. Service by publication is complete upon the date of the last publication. Proof of publication and mailing shall be made by certificate of the plaintiff's attorney, to which shall be attached a printed copy of the published notice with the name and dates of the newspaper marked thereon.
4. Return; amendment. Proof of service of the notice shall be made and amendment of the notice or proof of its service allowed in the manner provided for the return and amendment of the summons. [TCR 86-109]

2-993.6 Appearance or answer. If a defendant has no objection or defense to the taking of his/her property, he/she shall serve a notice of appearance designating the property in which he/she claims to be interested. Thereafter he/she shall receive notice of all proceedings affecting it. If a defendant has any objection or defense to the taking of his/her property, he/she shall serve his/her answer within twenty days after the service of notice upon him/her. The answer shall identify the property in which he/she claims to have an interest, state the nature and extent of the interest claimed, and state all of his/her objections and defenses to the taking of his/her property. A defendant waives all defenses and objections not so presented, but at the trial of the issue of just compensation, whether or not he/she has previously appeared or answered, he/she may present evidence as the amount of the compensation to be paid for his/her property, and he/she may share in the distribution of the award. No other pleading or motion asserting any additional defense or objection shall be allowed. [TCR 86-109]

2-993.7 Amendment of pleadings. Without leave of Court, the plaintiff may amend the complaint at any time before the trial of the issue of compensation and as many times as desired, but no amendment shall be made which will result in a dismissal forbidden by Section 2-993.9 of this subpart. The plaintiff need not serve a copy of an amendment, but shall serve notice of the filing, as provided in Section 2-331 (2) of this Act, upon any party affected thereby who has appeared and, in the manner provided in Section 2-993.9 of this subpart, upon any party affected thereby who has not appeared. The plaintiff shall furnish to the clerk of the Court for the use of the defendants at least one copy of each amendment, and he/she shall furnish additional copies on the request of the clerk or of a defendant. Within the time allowed by Section 2-993.6 of this subpart, a defendant may serve his/her answer to the amended pleading, in the form and manner and with the same effect as therein provided. [TCR 86-109]

2-993.8 Substitution of parties. If a defendant dies or becomes incompetent or transfers his/her interest after his/her joinder, the Court may order substitution of the proper party upon motion and notice of hearing. If the motion and notice of hearing are to be served upon a person not already a party, service shall be made as provided in Section 2-993.5(3). [TCR 86-109]

2-993.9 Dismissal of action.

1. As of right. If no hearing has begun to determine the compensation to be paid for a piece of property and the plaintiff has not acquired the title or a lesser interest in the property or taken possession thereof, the plaintiff may dismiss the action as to that property, without an order of the Court, by filing a notice of dismissal setting forth a brief description of the property as to which the action is dismissed.
2. By stipulation. Before the entry of any judgment vesting the plaintiff with title or a lesser interest in or possession of property, the action may be dismissed in whole or in part, without an order of the Court, as to any property by filing a stipulation of dismissal by the plaintiff and the defendant affected thereby; and, if the parties so stipulate, the Court may vacate any judgment that has been entered.
3. By order of the Court. At any time before compensation for a piece of property has been determined and paid and after motion and hearing, the Court may dismiss the action as to that property, except that it shall not dismiss the action as to any part of the property of which the plaintiff has taken possession or in which the plaintiff has taken title or a lesser interest so taken, or, if the possession, title, or interest in such property is to be returned to the defendant upon dismissal by motion of the plaintiff, the Court may also award reasonable actual damages incurred, not to exceed one thousand dollars ($1000.00) in excess of fair rental value of the premises during the period in which the plaintiff held possession or title against the plaintiff notwithstanding the

doctrine of sovereign immunity. The Court at any time may drop a defendant unnecessarily or improperly joined.

4. Effect. Except as otherwise provided in the notice, or stipulation of dismissal, or order of the Court, any dismissal is without prejudice. [TCR 86-109]

2-993.10 Deposit and its distribution. The plaintiff shall deposit with the Court any money required by law as a condition to the exercise of the power of eminent domain; and, although not so required, may make a deposit when permitted by statute. In such cases the Court and attorneys shall expedite the proceedings for the distribution of the money so deposited and for the ascertainment and payment of just compensation. If the compensation finally awarded to any defendant exceeds the amount which has been paid to him/her on distribution of the deposit, the Court shall enter judgment against him/her and in favor of the plaintiff for the overpayment. [TCR 86-109]

2-993.11 Costs. Costs shall normally be paid by the plaintiff in condemnation actions unless the Court, in its discretion, determines that a defendant should pay his/her own costs, which may include a reasonable portion of plaintiff's costs because of inequitable conduct or other statutory reason. [TCR 86-109]

TITLE 2
ARTICLE 10
JUDGMENT

2-1001 Judgment; costs.
2-1002 Default.
2-1003 Offer of judgment.
2-1004 Judgment for specific acts--vesting title.
2-1005 Summary judgment.
2-1006 Declaratory judgment.
2-1007 Entry of judgment.
2-1008 New trials; amendments of judgments.
2-1009 Relief from judgment or order.
2-1010 Harmless error.
2-1011 Stay of proceedings to enforce a judgment.
2-1012 Disability of a judge.
2-1013 Reserved.
2-1014 Judgment against infant.
2-1015 Judgments as liens.
2-1016 Discharge of money judgment liens.
2-1017 Additional case deposits.
2-1018 Reversal by appellate Court.
2-1019 Interest on money judgments.
2-1020 Exempt property.
2-1020.1 Payment of judgments from individual Indian moneys.

2-1001 Judgment; costs.

1. Definition; form. "Judgment" as used in this Article includes a final determination of the rights of the parties in an action, including those determined by a decree and by any order from which an appeal lies. A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings.
2. Judgment upon multiple claims or involving multiple parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the Court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims, or rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.
3. Demand for judgment; default. A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against when a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings.
4. Costs. Except when express provision therefor is made either in a statute of the Tribe or in this Article, costs shall be allowed as of course to the prevailing party unless the Court otherwise directs; but costs, including attorney fees and statutory authorization for collection of damages or requirement for bonds or undertakings, against the Tribe, its officers and agencies shall be imposed only to the extent specifically permitted by Tribal law. A general statement in this Article that such are payable by a party or by the plaintiff or defendant is not authority to impose such costs, damages, or requirements upon the Tribe, its officers, and agencies. Costs may be taxed by the clerk on one day's notice. On motion served within ten days thereafter, the action of the clerk may be reviewed by the Court.

5. Applied to probate proceedings. A judgment shall be considered a lawful debt in all proceedings held by the Department of the Interior or by the Tribal Court in the distribution of decedent's estates. [TCR 86-109, 94-07, 94-27]

2-1002 Default.

1. Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by affidavit or otherwise, the clerk shall enter the party's default.
2. Judgment. Judgment by default may be entered as follows:
   A. By the clerk. When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if the defendant has been defaulted for failure to appear and if he/she is not an infant or incompetent person.
   B. By the Court. In all other cases the party entitled to a judgment by default shall apply to the Court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment at least three days prior to the hearing on such application. If, in order to enable the Court to enter judgment or to carry it into effect, it is necessary to take in account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the Court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute of the Tribe.
3. Setting aside default. For good cause shown, the Court may set aside an entry of default and, if a judgment of default has been entered, may likewise set it aside in accordance with Section 2-1009 (2).
4. Plaintiff, counterclaimants, cross-claimants. The provisions of this Section apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Section 2-1001 (3).
5. Judgment against the Tribe. No judgment by default may be entered against the Tribe, its officers, or agencies unless sixty days written notice has been served upon the chief executive officer and the Tribal legislative authority. If during such sixty day period the Tribe is without counsel, and the Tribe has submitted to the Bureau of Indian Affairs an attorney contract for approval, no default may be entered until thirty days after approval of the contract. During such period, the Tribe, its agencies, or officers shall be allowed to cure any default. No judgment by default shall be entered against the Tribe, its agencies, or officers in any case until the claimant establishes his/her claim or right to relief, including his/her authority to bring the suit, and his/her damages by evidence satisfactory to the Court. [TCR 86-109]

2-1003 Offer of judgment. At any time more than ten days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him/her for the money or property or to the effect specified in his/her offer, with costs then accrued. If within ten days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the clerk shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not

admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability, or both, remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than ten days prior to the commencement of hearings to determine the amount or extent of liability. [TCR 86-109]

2-1004 Judgment for specific acts--vesting title. If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the Court may direct the act to be done at the cost of the disobedient party by some other person appointed by the Court and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the clerk shall issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the judgment. The Court may also in proper cases adjudge the party in contempt. If real or personal property is within the Tribal jurisdiction, and the interest in said property at issue in the action is not held in trust by the United States as Indian lands, the Court in lieu of directing a conveyance of that interest may enter a judgment divesting the interest from any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for delivery or possession, the party in whose favor it is entered is entitled to a writ of execution or assistance upon application. [TCR 86-109]

2-1005 Summary judgment.

1. For claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of twenty days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.
2. For defending party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.
3. Motion and proceedings thereon. The motion shall be served at least ten days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be entered on the issue of liability alone although there is a genuine issue as to the amount of damages.
4. Case not fully adjudicated on motion. If on motion under this Section judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the Court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

5. Form of affidavits; further testimony; defense required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The Court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this Section, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this Section, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.
6. When affidavits are unavailable. Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the Court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.
7. Affidavits made in bad faith. Should it appear to the satisfaction of the Court at any time that any of the affidavits presented pursuant to this Section are presented in bad faith or solely for the purpose of delay, the Court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt. [TCR 86-109, 94-27]

2-1006 Declaratory judgment. The procedure for obtaining a declaratory judgment in actions arising in equity, or through contract, or pursuant to any specific Tribal law authorizing a declaratory judgment, shall be in accordance with this Article, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Section 2-804. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The Court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar. [TCR 86-109]

2-1007 Entry of judgment.

1. Subject to the provision of Section 2-1001 (2), the Court shall promptly approve the form of the judgment, and the clerk shall thereupon enter it:
   A. Upon a general verdict of a jury, or upon a decision by the Court that a party shall recover only a sum certain or costs or that all relief shall be denied, the clerk, unless the Court otherwise orders, shall forthwith prepare, sign and enter the judgment without awaiting any direction by the Court;
   B. Upon a decision by the Court granting other relief, or upon a special verdict or a general verdict accompanied by answers to interrogatories the Court shall promptly approve the form of the judgment, and the clerk shall thereupon enter it.
2. Every judgment shall be set forth on a separate document. A judgment is effective only when so set forth and when entered in the civil docket book. Entry of the judgment shall not be delayed for the taxing of costs. Attorneys shall not submit forms of judgment except upon direction of the Court. [TCR 86-109, 94-27]

2-1008 New trials; amendments of judgments.

1. Grounds. A new trial is a re-examination in the same Court, of an issue of fact, or of law, or both and may be granted to all or any of the parties and on all or part of the issues for any of the following reasons:
   A. Irregularity in the proceedings of the Court, jury, referee, or prevailing party, or any order of the Court or referee, or abuse of discretion, by which the party was prevented from having a fair trial; or
   B. Misconduct of the jury or prevailing party; or
   C. Accident or surprise, which ordinary prudence could not have guarded against; or
   D. Excessive or inadequate damages, appearing to have been given under the influence of passion or prejudice; or
   E. Error in the assessment of the amount of recovery, whether too large or too small, where the action is upon a contract, or for the injury or detention of property; or
   F. That the verdict, report, or decision is not sustained by sufficient evidence, or is contrary to law; or
   G. Newly-discovered evidence, material for the party applying, which he/she could not, with reasonable diligence, have discovered and produced at the trial; or
   H. Error of law occurring at the trial, and objected to by the party making application; or
   I. When, without fault of the complaining party, it becomes impossible to make a record sufficient for appeal.

   On a motion for a new trial in an action tried without a jury, the Court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions, and direct the entry of a new judgment.
2. Time for motion. A motion for a new trial shall be served not later than ten days after the entry of the judgment, except that a motion based upon newly discovered evidence shall be made within one year from the date of the judgment.
3. Time for serving affidavits. When a motion for new trial is based upon affidavits they shall be served with the motion. The opposing party has ten days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding twenty days either by the Court for good cause shown or by the parties by written stipulation. The Court may permit reply affidavits.
4. On initiative of Court. Not later than ten days after entry of judgment the Court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the Court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case, the Court shall specify in the order the grounds therefor.
5. Motion to alter or amend a judgment. A motion to alter or amend the judgment shall be served not later than ten days after entry of the judgment. [TCR 86-109]

2-1009 Relief from judgment or order.

1. 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 of its own initiative or on the motion of any party and after such notice, if any, as the Court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate Court, and thereafter while the appeal is pending may be so corrected with leave of the appellate Court.

2. Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud; etc. On motion and upon such terms as are just, the Court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (A) mistake, inadvertence, surprise or excusable neglect; (B) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Section 2-1008 (2); (C) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (D) the judgment is void; (E) the judgment has been satisfied, released, or discharged, or a prior judgment on which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (F) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (A), (B), and (C) not more than one year after the judgment, order, or proceeding was entered or taken.

   A motion under this subsection (2) does not affect the finality of a judgment or suspend its operation. This Section 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 grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C., Section 1655, of the proceedings, or to set aside a judgment for fraud upon the Court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in this Article or by an independent action. [TCR 86-109, 94-07, 94-27]

2-1010 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 ground for granting a new trial or for setting aside a verdict or for vacating, modifying 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 must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties. [TCR 86-109]

2-1011 Stay of proceedings to enforce a judgment.

1. Automatic stay; exceptions—injunctions, receiverships, and patent accountings. Except as stated in this Article, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of ten days after its entry. Unless otherwise ordered by the Court, an interlocutory or final judgment in an action for an injunction or in a receivership action, or a judgment or order directing an accounting, shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. The provisions of subsection (3) of this section govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal.
2. 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 the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Section 2-1008, or of a motion for relief from a judgment or order made pursuant Section 2-1009, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Section 2-857, or of a motion for amendment to the findings or for additional findings made pursuant to Section 2-851(2).
3. 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 an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

4. Stay upon appeal. When an appeal is taken, the appellant by giving a supercedeas bond may obtain a stay subject to the exceptions contained in subsection (1) of this Section. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the appeal, as the case may be. The stay is effective when the supercedeas bond is approved by the Court.
5. Stay in favor of the Tribe or agency thereof. When an appeal is taken by the Tribe or an officer or agency thereof or by direction of any department of the government of the Tribe, the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.
6. Power of the appellate Court not limited. The provisions in this Section do not limit any power of the appellate Court or of a judge or justice thereof to stay proceedings during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.
7. Stay of judgment as to multiple claims or multiple parties. When the Court has ordered a final judgment under the conditions stated in Section 2-1001(2), 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. [TCR 86-109, 94-07]

2-1012 Disability of a judge. If a trial or hearing has been commenced and the judge is unable to proceed, any other judge may proceed with it upon certifying familiarity with the record and determining that the proceedings in the case may be completed without prejudice to the parties. In a hearing or trial without a jury, the successor judge shall at the request of a party recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor judge may also recall any other witness. [TCR 86-109, 94-27]

2-1013 Reserved. [TCR 86-109]

2-1014 Judgment against infant. It shall not be necessary to reserve in a judgment or order the right of a minor to show cause against it after his/her attaining full age; but in any case in which such reservation would be proper, the minor, within two years after arriving at the age of eighteen years, may show cause against such order or judgment. [TCR 86-109]

2-1015 Judgments as liens. Judgments of the Tribal Court and the Courts of the United States shall be liens on real estate of the judgment debtor within the Tribal jurisdiction from and after the time a certified copy of such judgment has been filed in the Court clerk's land tract records book. A five dollar ($5.00) fee shall be collected for each requested filing in the land tract records book. No judgment whether rendered by the Tribal Court or a Court of the United States shall be a lien on the estate of a judgment debtor until it has been filed in this manner. Execution shall be issued only by the Tribal Court. [TCR 86-109]

2-1016 Discharge of money judgment liens. In the event of an appeal to the Tribal appellate Court from a money judgment, the lien of such judgment, and any lien by virtue of an attachment issued and levied in the action in which such judgment was rendered, shall cease upon the judgment debtor or debtor's depositing, with the Court clerk of the Tribal Court, cash sufficient to cover the whole amount of the judgment, including interest, costs and any attorney fees, together with costs and interest on the appeal, accompanied by a written statement, executed by the judgment debtor or debtors, that such deposit is made to discharge the lien of such judgment and any lien by virtue of an attachment issued and levied in the action, as provided for herein. It shall be the duty of the Court clerk, upon receipt of such a cash deposit and written statement, immediately to enter the same and the amount of cash received upon the civil

appearance docket in the action, upon the judgment docket opposite the entry of such judgment, and upon the land tract records book if the judgment has been filed therein. It shall further be the duty of the Court clerk to deposit the cash so received in any action in a separate interest bearing official depository account and to hold the same pending final determination of the action, and, upon final determination of the action, to pay, or apply the same upon any judgment that might be rendered against the depositor or depositors, and to refund any balance in excess of any such judgment to the depositor or depositors, or, in the event the action be finally determined in favor of the depositor or depositors, to refund the whole amount thereof to the depositor or depositors. [TCR 86-109, 94-07]

2-1017 Additional case deposits. A judgment creditor may, at any time, upon reasonable notice to the judgment debtor or debtors, move the Court for the deposit of additional cash, and if it appears that the cash which has been deposited is insufficient to cover the whole amount of the judgment, including interest, costs and any attorney fees, together with costs and interest on the appeal, the Court shall order the deposit of additional cash. If the additional cash is not deposited within a reasonable time, which time shall be set by the Court, the judgment shall be revived and attachment may be issued thereon. [TCR 86-109]

2-1018 Reversal by appellate Court. In the event of a reversal of the judgment by the appellate Court, no money deposited to discharge the lien of such judgment shall be refunded by the Court clerk until final disposition of the action. [TCR 86-109, 94-07]

2-1019 Interest on money judgments. All money judgments of the Tribal Court shall bear interest at the rate of ten percent simple interest per annum, except authorized judgments against the Tribe, its political subdivisions, and agents in their official capacity which judgments shall not bear interest unless such is specifically provided for, provided that when a rate of interest is specified in a contract, the rate therein shall apply to the judgment debt and be specified in the judgment if the rate does not exceed the lesser of any limitation imposed by Tribal law, or the law of the jurisdiction in which the contract was made, upon the amount of interest which may be charged. [TCR 86-109, 94-07]

2-1020 Exempt property. The following property shall be exempt, except as to enforcement of contractual liens or mortgages, from garnishment, attachment, execution and sale, and other process for the payment of principal and interest, costs, and attorney fees upon any judgment of the Tribal Court:

1. Three-fourths of the new wages earned per week by the person or an amount equivalent to forty times the federal minimum hourly wages per week, whichever is greater, except as may be specifically provided by law for child support payments.
2. One automobile of fair market value not exceeding one thousand dollars ($1,000.00).
3. Tools, equipment, utensils, or books necessary to the conduct of the person's business but not including stock or inventory.
4. Actual trust or restricted title to any lands held in trust by the United States, or subject to restrictions against alienation imposed by the United States but not including leasehold and other possessory interests in such property.
5. Any dwelling used as the actual residence of the judgment debtor, including up to five acres of land upon which such dwelling is located whether such dwelling is owned or leased by the judgment debtor.
6. Household goods, furniture, wearing apparel, personal effects, but not including televisions, radios, phonographs, tape recorders, home computers, (not otherwise exempt) more than two firearms, works of art, and other recreational or luxury items.
7. One horse, one bridle, and one saddle.

8. All implements of husbandry used upon the homestead, not more than four cows with their immature offspring, two hogs with their immature offspring, ten chickens, and feed suitable and sufficient to maintain said livestock and fowls for a period of one year.
9. All ceremonial or religious items. [TCR 86-109, 94-07]

2-1020.1 Payment of judgment from individual Indian moneys. Whenever the Tribal Court shall have ordered payment of money damages to an injured party and the debtor refuses or neglects to make such payment within the time set for payment by the Court, or when an execution is returned showing no property found, and when the debtor has sufficient funds to his/her credit at any Bureau of Indian Affairs Agency office to pay all or part of such judgment, the clerk of the Tribal Court, upon request of the judgment creditor, shall certify the record of the superintendent of the agency, who shall certify to the Secretary of the Interior the record of the case and the amount of available funds. If the secretary shall so direct, the disbursing agent shall pay over to the judgment creditor the amount of the judgment, or such lesser amount as may be specified by the secretary from the account of the judgment debtor.
[TCR 86-109, 94-07]

TITLE 2
ARTICLE 10, JUDGMENT
SUBPART A
FOREIGN JUDGMENTS

2-1021 Definition.
2-1022 Filing and status of foreign judgments.
2-1023 Grounds for non-recognition.
2-1024 Notice of filing.
2-1025 Stay of execution of foreign judgment.
2-1026 Fees.
2-1027 Optional procedure.

2-1021 Definition. In this Article, "foreign judgment" means any judgment, decree, or order of a Court of the United States, any Indian Tribe, or of any other Court which is entitled to comity or full faith and credit in the Tribal Court. [TCR 86-109]

2-1022 Filing and status of foreign judgments. A copy of any foreign judgment authenticated in accordance with the applicable act of Congress or of the statutes of the Tribe may be filed in the office of the Court clerk. The clerk shall treat the foreign judgment in the same manner as a judgment of the Tribal Court. A judgment so filed has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a judgment of the Tribal Court and may be enforced or satisfied in like manner. Provided, however, that no such filed foreign judgment shall be a lien on real estate of the judgment debtor until a certified copy of the judgment so filed is also filed in the office of the Court clerk as provided by law in the land tract record book. [TCR 86-109, 94-07]

2-1023 Grounds for non-recognition.

1. A foreign judgment is not conclusive if:
   - A. The judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law;
   - B. The foreign Court did not have personal jurisdiction over the defendant; or
   - C. The foreign Court did not have jurisdiction over the subject matter.
2. A foreign judgment need not be recognized if:
   - A. The defendant in the proceedings in the foreign Court did not receive notice of the proceedings in sufficient time to enable him/her to defend;
   - B. The judgment was obtained by fraud;
   - C. The cause of action on which the judgment is based is repugnant to the public policy of the Tribe;
   - D. The judgment conflicts with another final and conclusive judgment;
   - E. The proceeding in the foreign Court was contrary to an agreement between the parties under which the dispute in question was to be settled other than by proceedings in that Court; or
   - F. In the case of jurisdiction based only on personal service, the foreign Court was a seriously inconvenient forum for the trial of action.
3. No foreign judgment in the nature of an eviction or action for forcible entry and detention or detention only, no matter how denominated, shall be entitled to comity or full faith and credit if either party to the underlying action is a member of the Winnebago Tribe of Nebraska and the Tribal Court would have possessed concurrent jurisdiction over the underlying action. No such judgment shall be recognized or entitled to any precedential value in the Winnebago Tribal Court System. This provision shall become effective immediately upon its adoption and shall apply to

any action for which no final judgment has been rendered and entered in the civil docket book by the Winnebago Tribal Court. [TCR 86-109]

2-1024 Notice of filing.

1. At the time of the filing of the foreign judgment, the judgment creditor or his/her lawyer shall make and file with the clerk of the Court an affidavit setting forth the name and last known post office address of the judgment debtor, and of the judgment creditor.
2. Promptly upon the filing of the foreign judgment and the affidavit, the clerk shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice shall include the name and post office address of the judgment creditor and the judgment creditor's lawyer, if any. In addition, the judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the clerk. Lack of notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed. [TCR 86-109]

2-1025 Stay of execution of foreign judgment.

1. If the judgment debtor shows the Tribal Court that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the Court shall stay enforcement of the foreign judgment until the appeal is concluded, or until the time for appeal expires, or until the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the law of the jurisdiction in which it was rendered.
2. If the judgment debtor shows the Tribal Court any ground upon which enforcement of a judgment of the Tribal Court would be stayed, the Court shall stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction of the judgment which is required in the Tribal jurisdiction. [TCR 86-109, 94-07]

2-1026 Fees. Any person filing a foreign judgment shall pay to the Court clerk those fees now and hereafter prescribed by the statute or by authorized Court rule for the filing of an action in the Court. Fees for docketing, transcription, or other enforcement proceedings shall be the same as provided for judgment of the Tribal Court. [TCR 86-109, 94-07]

2-1027 Optional procedure. The right of a judgment creditor to bring an action to enforce his/her judgment instead of proceedings under this subpart remains unimpaired. [TCR 86-109]

TITLE 2
ARTICLE 10, JUDGMENT
SUBPART B
EXECUTION

2-1031 Execution--defined.
2-1032 Kinds of executions.
2-1033 Property subject to levy.
2-1034 Property bound after seizure.
2-1035 Execution must be issued within five years.
2-1036 Priority among property.
2-1037 Priority among executions.
2-1038 Levy by priority.
2-1039 Who makes levy.
2-1040 When levy void.
2-1041 Penalty for unlawful levy.
2-1042 Levy on property claimed by third person.
2-1043 Re-delivery to defendant.
2-1044 Notice of sale of chattels.
2-1045 Further levy when property taken, insufficient.
2-1046 Filing and indexing of execution.
2-1047 Waiver of appraisement.
2-1048 Return of appraisement.
2-1049 When lien restricted.
2-1050 Notice of sale of realty.
2-1051 Confirmation of sale.
2-1052 Police chief's deed.
2-1053 Advance of printer's fees.
2-1054 Demand for printing fees.
2-1055 Place of sale.
2-1056 Other executions of realty not sold.
2-1057 Levy on realty under several executions.
2-1058 Deed by successor of officer making sale.
2-1059 Payment to defendant of overplus after sale.
2-1060 Reversal of judgment after sale of interest in land.
2-1061 Execution of judgment in favor of Tribe.
2-1062 Reappraisal where realty twice advertised for sale.
2-1063 Return of execution.
2-1064 Principal and surety.
2-1065 Hearing on assets.

2-1031 Execution--defined. Executions shall be deemed process of the Court, and shall be issued by the clerk, and directed to the Chief of the Tribal Police. [TCR 86-109, 94-07]

2-1032 Kinds of executions. Executions are of three kinds:

1. Against the property of the judgment debtor.
2. For the delivery of possession of real or personal property, with damages for withholding the same, and costs.
3. Executions in special cases. [TCR 86-109]

2-1033 Property subject to levy. Lands, tenements, goods and chattels, not exempt by law shall be subject to the payment of debts, and shall be liable to be taken on execution and sold, as hereinafter provided. [TCR 86-109]

2-1034 Property bound after seizure. All real estate not bound by the lien of the judgment, as well as goods and chattels of the debtor, shall be bound from the time they shall be seized in an execution. [TCR 86-109]

2-1035 Execution must be issued within five years. If execution is not issued and filed as provided by this subpart within five years after the date of any judgment that now is or may hereafter be rendered, in the

Tribal Court or if five years have intervened between the date that the last execution on such judgment was filed and the date that writ of execution was filed, such judgment shall become unenforceable and of no effect and shall cease to operate as a lien on the real estate of the judgment debtor. Provided, that this Section shall not apply to judgments in favor of the Tribe, its subdivisions or agents. [TCR 86-109]

2-1036 Priority among property. The writ of execution against the property of the judgment debtor, issuing from the Tribal Court shall command the officer to whom it is directed, that of the goods and chattels of the debtor he/she cause to be made the money specified in the writ; and for want of goods and chattels, he/she cause the same non-trust interest in lands and tenements of the debtor; and the amount of the debt, damages and costs, for which the judgment is entered, shall be endorsed on the execution. [TCR 86-109]

2-1037 Priority among executions. When two or more writs of execution against the same debtor shall be sued out and when two or more writs of execution against the same debtor shall be delivered to the officer prior to the date of sale of this property, no preference shall be given to either of such writs; but if a sufficient sum of money be not made to satisfy all such executions; the amount made shall be distributed to the several creditors in proportion to the amount of their respective demands, provided that nothing therein contained shall be so construed as to affect any preferable lien which one or more of the judgments, on which execution issued, may have on the property of the judgment debtor. [TCR 86-109]

2-1038 Levy by priority. The officer to whom a writ of execution is delivered, shall proceed immediately to levy the same upon the goods and chattels of the debtor; but if no goods and chattels can be found, the officer shall endorse on the writ of execution, "no goods," and forthwith levy the writ of execution upon any interest in the lands and tenements of the debtor, which may be liable to satisfy the judgment; and if any of the interests in such lands and tenements of the debtor which may be liable shall be encumbered by mortgage or any other lien or liens, such lands and tenements may be levied upon and appraised and sold, subject to such lien or liens, which shall be stated in the appraisement. [TCR 86-109]

2-1039 Who makes levy. It shall be unlawful for anyone to levy an attachment or execution within the Tribal jurisdiction who is not a bonded Tribal or federal police officer. [TCR 86-109]

2-1040 When levy void. Any attachment or execution issued to, or levied by anyone other than a bonded Tribal or federal police officer shall be void and of no effect and the Court clerk or other person issuing same, or officer or other person issuing same, as the case may be, together with their bondsmen shall be liable for any damage caused thereby. [TCR 86-109]

2-1041 Penalty for unlawful levy. Anyone violating the provisions of Section 2-1039 of this Article shall be punished by a fine not to exceed one hundred dollars ($100.00) or confinement in the Tribal jail not to exceed thirty days or both. [TCR 86-109]

2-1042 Levy on property claimed by third person. If the officer, by virtue of an execution issued from the Tribal Court, shall levy the same on any goods and chattels claimed by any person other than the defendant, or be requested by the plaintiff to levy on any such goods and chattels, the officer may require the plaintiff to give him/her an understanding with good and sufficient securities to pay all costs and damages that he/she may sustain by reason of the detention or sale of such property; and until such undertaking shall be given the officer may refuse to proceed as against such property. [TCR 86-109]

2-1043 Re-delivery to defendant. In all cases where the Tribal police chief or other officer shall, by virtue of an execution, levy upon any goods and chattels which shall remain upon his/her hands unsold, for want of bidders, for the want of time to advertise and sell, or any other reasonable cause, the officer may, for his/her own security, take of the defendant an undertaking, with security, in as such sum as he/she may deem sufficient, to the effect that the said property shall be delivered to the officer holding an execution for the sale of the same, at the time and place appointed by said officer, either by notice, given in writing, to said defendant in execution, or by advertisement published in a legal newspaper, naming therein the day and place of sale. If the defendant shall fail to deliver the goods and chattels at the same time and place mentioned in the notice to him/her, given, or pay to the officer holding the execution the full value of such goods and chattels, or the amount of said debt and costs, the undertaking, given as aforesaid, may be proceeded on as in other cases. [TCR 86-109]

2-1044 Notice of sale of chattels. The officer who levies upon goods and chattels, by virtue of an execution issued by the Tribal Court, before he/she proceeds to sell the same shall cause public notice to be given of the time and place of sale, for at least ten days before the day of sale. The notice shall be given by advertisement, published in some newspaper printed, or, in case no legal newspaper be published, by setting up advertisements in five public places in the reservation. Two advertisements shall be put up in the township where the sale is to be held; and where goods and chattels levied upon cannot be sold for want of bidders, the officer making such return shall annex to the execution a true and perfect inventory of such goods and chattels, and the plaintiff in such execution may thereupon sue out another writ of execution, directing the sale of the property levied upon as aforesaid; but such goods and chattels shall not be sold, unless the time and place of sale be advertised, as hereinbefore provided. [TCR 86-109]

2-1045 Further levy when property taken, insufficient. When any writ shall issue, directing the sale of property previously taken in execution, the officer issuing said writ shall, at the request of the person entitled to the benefit thereof, his/her agent or attorney, add thereto a command to the officer to whom such writ shall be directed, that if the property remaining in his/her hands not sold shall, in his/her opinion, be insufficient to satisfy the judgment, he/she shall levy the same upon lands and tenements, goods and chattels, or either, as the law shall permit, being the property of the judgment debtor, sufficient to satisfy the debt. [TCR 86-109]

2-1046 Filing and indexing of execution.

1. When a general execution issued and placed in the custody of the Tribal police chief for levy, a certified copy of such execution shall be filed in the office of the Court clerk and shall be indexed the same as judgment.
2. If a general or special execution is levied upon an interest lands and tenements, the Tribal police chief shall endorse on the face of the writ the legal description and shall have three disinterested persons who have taken an oath to impartially appraise the property so levied on, upon actual view; and such disinterested persons shall return to the officer their signed estimate of the real value of said property.
3. To extend a judgment beyond the initial or any subsequent statutory period, prior to the expiration of such period, a certified copy of a general execution thereon shall be filed and indexed in the same manner as judgments in the office of the Court. [TCR 86-109, 94-07]

2-1047 Waiver of appraisement. It is against the public policy of the Tribe to allow enforcement of execution upon realty without appraisal, and if the words “appraisement waived” or other words of similar import, shall be inserted in any deed, mortgages, bonds, notes, bill or written contract. They shall be of no

effect whatsoever and an appraisal shall be ordered notwithstanding any contract to the contrary. [TCR 86-109]

2-1048 Return of appraisement. The officer receiving such return of appraisement pursuant to Section 2-1046(2) of this Article shall forthwith deposit a copy thereof with the clerk of the Court and advertise and sell such property, agreeable to the provisions of this Article. [TCR 86-109]

2-1049 When lien restricted. If, upon such return, as aforesaid, it appear, by the inquisition, that two-thirds of the appraised value of said non-trust interest in lands and tenements so levied upon, is sufficient to satisfy the execution, with costs, the judgment on which such execution issued shall not operate as a lien on the residue of the debtor's estate, to the prejudice of any other judgment creditor; but no such property shall be sold for less than two-thirds of the value returned in the inquest; and nothing in this Section contained shall, in any way, extend to affect the sale of lands by the Tribe but all lands, the corporation or associations indebted to the Tribe, for any debt or taxes, or in any other manner, shall be sold without valuation for the discharge of such debt or taxes, agreeable to any laws in such cases made and provided. [TCR 86-109]

2-1050 Notice of sale of realty. Any non-trust interest in lands and tenements taken on execution shall not be sold until the officer causes public notice of the time and place of sale to be given by publication for two successive weeks in a legal newspaper and by putting up an advertisement upon the Courthouse door or other common bulletin board within a common area of the Courthouse and in five other public places in the reservation, two of which shall be in the township where such lands and tenements lie. Such sale shall not be held less than thirty days after the date of the first publication of the notice herein required. [TCR 86-109]

2-1051 Confirmation of sale. If the Court, upon return of any writ of execution, for the satisfaction of which lands or tenements have been sold, shall, after having carefully examined the proceedings of the officer be satisfied that the sale has, in all respects, been made in conformity with the provisions of this Article, the Court shall direct the clerk to make an entry on the journal that the Court is satisfied of the legality of such sale, and an order that the officer make to the purchaser a deed for such interest in lands and tenements; and the officer, on making such sale, shall deposit the purchase money with the clerk of the Court where the same shall remain until the Court shall have examined his/her proceedings as aforesaid, when such clerk of the Court shall pay the same of the person entitled thereto, agreeable to the order of the Court. [TCR 86-109]

2-1052 Police chief's deed. The chief of the Tribal police or other officer who, upon such writ or writs of execution, shall sell the said lands and tenements, or any part thereof, shall make to the purchaser as good and sufficient deed of conveyance of the land sold, as the person or persons against whom such writ or writs of execution were issued could have made of the same, at or any time after they became liable to the judgment. The deed shall be sufficient evidence of the legality of such sale, and the proceedings therein, until the contrary be proved, and shall vest the purchaser as good and perfect an estate in the premises therein mentioned as was vested in the party at, or after, the time when such lands and tenements became liable to the satisfaction of the judgment; and such deed of conveyance, to be made by the chief of Tribal police or other officer, shall recite the execution or executions, or the substance thereof, and the names of the parties, the amount and date of rendition of each judgment, by virtue whereof the said lands and tenements were sold as aforesaid, and shall be executed, acknowledged and recorded as is or may be provided by law, to perfect the conveyance of such interests in real estate in other cases.
[TCR 86-109, 94-07]

2-1053 Advance of printer's fees. The officer who levies upon the goods and chattels, or lands and tenements, or who is charged with the duty of selling the same by virtue of any writ of execution, may refuse to publish a notice of the sale thereof by advertisement in a newspaper until the party for whose benefit such execution issued, his/her agent or attorney, shall advance to such officer so much money as will be sufficient to discharge the fees of the printer for publishing such notice. [TCR 86-109]

2-1054 Demand for printing fees. Before any officer shall be excused from giving the notification mentioned in Section 2-1052, he/she shall demand of the party for whose benefit the execution was issued, his/her agent or attorney, the fees in said section specified. [TCR 86-109]

2-1055 Place of sale. All sales of interests in lands or tenements under execution shall be held at the Tribal Courthouse unless some other place within the reservation is designated by the judge having jurisdiction in the case. No Tribal policeman or other officer making the sale of property, either personal or real, nor any appraiser of such property, shall either directly or indirectly, purchase the same; and every purchase so made shall be considered fraudulent and void. [TCR 86-109]

2-1056 Other executions of realty not sold. If lands or tenements, levied on aforesaid, are not sold upon one execution, other executions may be issued to sell the property so levied upon. [TCR 86-109]

2-1057 Levy on realty under several executions. In all cases where two or more executions shall be put into the hands of the Tribal police or other officer, and it shall be necessary to levy on real estate to satisfy the same, and either of the judgment creditors, in whose favor one or more of said executions are issued, shall require the Tribal police or other officer to levy said executions, or so many thereof as may be required, or other officer to levy said executions, or so many thereof as may be required, on separate parcels of real property of the judgment debtor or debtors, it shall be the duty of the officer, when required, to levy the same on separate parcels of the real property of the judgment debtor or debtors, when, in the opinion of the appraisers, the property of said debtors will not be sufficient, at two-thirds of its appraised value, to satisfy all the executions chargeable thereon, such part of the same shall be levied on, to satisfy each execution, as will bear the same proportion in value to the whole, as the amount due to the execution bears to the amount of all the executions chargeable thereon, as near as may be according to the appraised value of each separate parcel of said real property. [TCR 86-109, 94-07]

2-1058 Deed by successor of officer making sale. If the term of service of the Tribal police chief or other officer who has made, or shall hereafter make sale of any non-trust interest in lands and tenements, shall expire, or if the Tribal police chief or other officer shall be absent, or be rendered unable by death or otherwise, to make a deed of conveyance of the same, any succeeding Tribal police chief or other officer or the law enforcement officer acting on his/her behalf, on receiving a certificate from the Court from which the execution issued for the sale of said non-trust interest in lands and tenements, signed by the clerk, by order of said Court, setting forth that sufficient proof has been made to the Court that said sale was fairly and legally made, and on tender of the purchase money, or if the same or any part thereof be paid then on proof of such payment and tender of the balance, if any, may execute to said purchaser or purchasers, or his/her legal representatives, a deed of conveyance of said lands and tenements so sold. Such deed shall be as good and valid in law and have the same effect as if the Tribal police chief or other officer who made the sale had executed the same. [TCR 86-109]

2-1059 Payment to defendant of overplus after sale. If, on any sale made as aforesaid, there shall be in the hands of the Tribal police chief or other officer more money than is sufficient to satisfy the writ or

writs of execution, with interest and costs, the Tribal police chief or other officer shall, on demand, pay the balance to the defendant in execution. [TCR 86-109, 94-07]

2-1060 Reversal of judgment after sale of interest in land. If any judgment or judgments, in satisfaction of which any non-trust interest in lands or tenements are sold, shall at any time thereafter be reversed, such reversal shall not defeat or affect the title of the purchaser or purchasers; but in such cases, restitution shall be made, by the judgment creditors, of the money, for which such lands or tenements were sold, with lawful interest on the day of sale. [TCR 86-109]

2-1061 Execution on judgment in favor of Tribe. In all civil actions wherein the Tribe as plaintiff, has heretofore or may hereafter recover judgment, and where in any such action an execution has or may be issued, the Tribe through the officer or officers on whose relation the action was brought, may bid at such execution sale, and buy said property offered for sale, for any amount not to exceed the amount of the judgment in such action and such additional amount as may be approved by the Tribal legislative body said amount to be credited upon the judgment.
And further, when such property offered for the sale as execution is bought by the Tribe, said property may be sold for the Tribe by the officer or officers upon whose relation the Tribe was party plaintiff, and further provided that at such execution sales the attorney or attorneys representing the Tribe may bid for the Tribe, not to exceed the amount of the judgment and such additional amount as may be approved by the Tribal legislative body, provided, however, that said bid is not more than one hundred dollars ($100.00) higher than the next best bid, and if there be no other bidder, then not to exceed one hundred dollars ($100.00).
And further provided that in disposing of such property so acquired, if it be personal property the officer or successor of the officer in whose relation the Tribe was plaintiff may sell said property by executing a good and sufficient bill of sale, to be attested by the secretary of the Tribe. Provided, however, that in no event shall any sale be valid under this Article for any amount less than the amount for which said property was originally bid in by the Tribe. The funds obtained upon the sale of any such property shall be placed in the fund for which the judgment was obtained, or if none, then in the Tribal land purchases fund for the purchase of further real property to the Tribe. [TCR 86-109]

2-1062 Reappraisal where realty twice advertised for sale. In all cases where a non-trust interest in real estate has been or may hereafter be taken on execution and appraised and twice advertised and offered for sale, and shall remain unsold for the want of bidders it shall be the duty of the Court, on motion of the plaintiff, to set aside such appraisement and order a new one to be made, or to set aside such levy and appraisement and order a new execution to issue, as the case may require. [TCR 86-109]

2-1063 Return of execution. The chief of the Tribal police or other officer to whom any writ or execution shall be directed, shall return such writ to the Court to which the same is returnable, within ninety days from the date thereof. [TCR 86-109, 94-07]

2-1064 Principal and surety. In all cases where judgment is rendered in the Tribal Court upon any instrument of writing in which two or more persons are jointly and severally bound, and it shall be made to appear to the Court, by parol or other testimony, that one or more of said persons so bound, signed the same as surety or bail, for his/her or their co-defendant, it shall be the duty of the clerk of said Court, in recording the judgment thereon to certify which of the defendant is principal debtor, and which are sureties or bail. And the clerk of the Court aforesaid shall issue execution on such judgment, commanding the chief of the Tribal police or other officer to cause money to be made of the goods and chattels, lands and tenements, of the principal debtor. In case of lack of sufficient property of the principal debtor, the officer shall cause money to be made of the goods and chattels, lands and tenements, of the surety or bail. In all cases, the property, both personal and real, of the principal debtor, within the jurisdiction of the Court,

shall be exhausted before any of the property of the surety or bail shall be taken in execution. [TCR 86-109, 94-07, 94-27]

2-1065 Hearing on assets. In addition to other discovery procedures, the Court, at any time after judgment upon motion of the judgment creditor, may order the judgment debtor to appear and answer concerning his/her property subject to execution to satisfy the judgment. The order to appear shall be served on the judgment debtor as a summons is served and may contain an order prohibiting the conveyance of any non-exempt property, and may order the production of any books, records, documents, or papers relating to the judgment creditor's property. Such order may be enforced by contempt proceedings. [TCR 86-109, 94-27]

TITLE 2
ARTICLE 10, JUDGMENT
SUBPART C
CONTRIBUTION

2-1071 Joint debtors or sureties.

2-1072 Joint tort-feasor; contribution; indemnity; exemptions; covenant not to sue, etc.

2-1071 Joint debtors or sureties. When property, liable to an execution against several persons, is sold thereon, and more than a due proportion of the judgment is laid upon the property of one of them, or one of them pays, without a sale, more than his/her proportion, he/she may regardless of the nature of the demand upon which the judgment was rendered, compel contribution from the others; and when a judgment is against several, and is upon an obligation of one of them, as security for another, and surety pays the amount, or any part thereof, either by sale of his/her property or before sale, he/she may compel repayment from the principal; in such case, the person so paying or contributing is entitled to the benefit of the judgment, to enforce contribution or repayment, if within ten days after his/her payment he/she files with the clerk of Court notice of his/her payment and claim to contribution or repayment. Upon filing of such notice, the clerk shall make an entry thereof in the margin of the docket. [TCR 86-109]

2-1072 Joint tort-feasors; contribution; indemnity; exemptions; covenant not to sue, etc.

1. When two or more persons become jointly or severally liable in tort for the same injury to person or property or for the same wrongful death, there is a right of contribution among them even though judgment has not been recovered against all or any of them except as provided in this Section.
2. The right of contribution exists only in favor of a tortfeasor who has paid more than his/her pro rata share of the common liability, and his/her total recovery is limited to the amount paid by him/her in excess of his/her pro rata share. No tortfeasor is compelled to make contribution beyond his/her own pro rata share of the entire liability.
3. There is no right of contribution in favor of any tortfeasor who has intentionally caused or contributed to the injury or wrongful death.
4. A tortfeasor who enters into a settlement with a claimant is not entitled to recover contribution from another tortfeasor whose liability for the injury or wrongful death is not extinguished by the settlement nor in respect to any amount paid in a settlement which is in excess of what was reasonable.
5. A liability insurer which by payment has discharged, in full or in part, the liability of a tortfeasor and has thereby discharged in full its obligation to insurer, is subrogated to the tortfeasor's right of contribution to the extent of the amount it has paid in excess of the tortfeasor's pro rata share of the common liability. This provision does not limit or impair any right of subrogation arising from any other relationship.
6. This Article does not impair any right of indemnity under existing law. When one tortfeasor is entitled to indemnity from another, right of the indemnity obligee is for indemnity and not contribution, and the indemnity obligor is not entitled to contribution from the obligee for any portion of his/her indemnity obligation.
7. This subpart shall not apply to breaches of trust or of other fiduciary obligation.
8. When a release, covenant not to sue or a similar agreement is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:

A. It does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide; but it reduces the claim against others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and

B. It discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor. [TCR 86-109]

TITLE 2
ARTICLE 10, JUDGMENT
SUBPART D
COSTS

2-1081 Affidavit in forma pauperis.
2-1082 False swearing in such case.
2-1083 Costs where defendants disclaim.
2-1084 Certain costs taxed at discretion of Court.
2-1085 Costs to successful party as matter of course.
2-1086 Costs in other cases.
2-1087 Several actions on joint instruments.
2-1088 Clerk to tax costs.
2-1089 Cost of notice or other legal publication.
2-1090 Attorney fees taxable as costs.
2-1091 Costs defined.
2-1092 Authority of Court to fix cost rates.

2-1081 Affidavit in forma pauperis. Any person who cannot afford to pay costs of an action in order to vindicate his/her rights may be allowed by the Court to proceed without paying costs upon the filing of an affidavit in forma pauperis. The affidavit in forma pauperis shall be in the form following and attached to the petition, viz:

> (Name of Tribe, name of reservation) in the Tribal Court of (name of Tribe): I do solemnly swear that the cause of action set forth in the petition hereto prefixed is just, and I (or we) to further swear that by reason of my (or our) poverty, I am unable to give security for costs. [TCR 86-109, 94-07]

2-1082 False swearing in such case. Any person willfully swearing falsely in making the affidavit aforesaid, shall, on conviction, be adjudged guilty of perjury, and punished as the law prescribes. [TCR 86-109]

2-1083 Costs where defendants disclaim. Where defendants disclaim having any title or interest in land or other property, the subject matter of action, they shall recover their costs, unless for special reasons the Court decides otherwise. [TCR 86-109]

2-1084 Certain costs taxed at discretion of Court. Unless otherwise provided by statute, the costs of motions, continuances, amendments and the like, shall be taxed and paid as the Court, in its discretion, may direct. [TCR 86-109]

2-1085 Costs to successful party as matter of course. Where it is not otherwise provided by this and other statutes, costs shall be allowed of course to the party, upon judgment in his/her favor, in actions for the recovery of money only, or for the recovery of specific, real or personal property. [TCR 86-109]

2-1086 Costs in other cases. In other actions, the Court may award and tax costs, and apportion the same between the parties on the same or adverse sides, as in its discretion it may think right and equitable. [TCR 86-109]

2-1087 Several actions on joint instruments. Where several actions are brought on one bill of exchange, promissory note or other obligation, or instrument in writing, against several parties who might have been joined as defendants in the same action, no costs shall be recovered by the plaintiff in more than one of such action, if the parties proceeded against in the other actions were, at the commencement of the

previous action, openly within the Tribal jurisdiction or otherwise subject to suit and service of process in the Tribal Court and the whereabouts of such persons were known or could have been ascertained with reasonable diligence. [TCR 86-109, 94-07]

2-1088 Clerk to tax costs. The clerk of the Tribal Court shall tax the costs in each case, and insert the same in their respective judgments, subject to relaxation by the Court, on motion of any person interested. [TCR 86-109, 94-07]

2-1089 Cost of notice or other legal publication. Whenever any notice, or other legal publication is required by law to be made in any action or proceeding pending in the Court, the cost of such publication shall be taxed as other costs in said action or proceeding. [TCR 86-109]

2-1090 Attorney fees taxable as costs.

1. In any civil action to recover on an open account, a statement of account, account stated, note, bill, negotiable instrument, or contract relating to the purchase or sale of goods, wares, or merchandise, or for labor or services, unless otherwise provided by law or the contract which is the subject of the action, the prevailing party shall be allowed a reasonable attorney fee to be set by the Court, to be taxed and collected as costs.
2. In any civil action to enforce payment of or to collect upon a check, draft or similar bill of exchange drawn upon a bank or otherwise, payment upon which said instrument has been refused because of insufficient funds or no account, the party prevailing on such cause of action shall be awarded a reasonable attorney's fee, such fee to be assessed by the Court as costs against the losing party; provided, that said fee shall not be allowed unless the plaintiff offers proof during the trial of said action that prior to the filing of the petition in the action demand for payment of the check, draft or similar bill of exchange had been made upon the defendant by registered or certified mail not less than ten days prior to the filing of such suit.
3. In any civil action or proceeding to recover for the overpayment of any charge for water, sanitary sewer, garbage, electric or natural gas service from any person, firm or corporation, or to determine the right of any person, firm or corporation to receive any such service, the prevailing party shall be allowed a reasonable attorney fee to be set by the Court, to be taxed and collected as costs.
4. In any civil action brought to recover damages for breach of an express warranty or to enforce the terms of an express warranty against the seller, retailer, manufacturer, manufacturer's representative or distributor, the prevailing party shall be allowed a reasonable attorney fee to be set by the Court, which shall be taxed and collected as costs.
5. In any civil action to recover damages for the negligent or willful injury to property and any other incidental costs related to such action, the prevailing party shall be allowed reasonable attorney's fees, Court costs and interest to be set by the Court and to be taxed and collected as other costs of the action, except that a plaintiff who is required to pay costs pursuant to Section 2-1003 of this Article may not recover his/her attorney's fees as provided by this subsection. [TCR 86-109]

2-1091 Costs defined. Costs include, in addition to items of expense specifically recoverable as costs pursuant to any statute of the Tribe, fees required to be paid by law for the filing of any paper in any action, expense for service of process as provided by law, costs of transcripts, Tribal police fees for service of papers and mileage, costs of publication of any notice required to be published, printing of briefs or other documents required by the Court to be printed, and any other items made recoverable as costs by Court rule. [TCR 86-109, 94-07]

2-1092 Authority of Court to fix cost rates. The Court by rule may set the fees and costs of any service performed by the Court clerk or the Tribal police chief on behalf of the parties when such fees and costs are not provided for by Tribal statute. Such fees and costs shall be maintained at the minimum level possible considering the needs of the Court fund. [TCR 86-109, 94-07]

TITLE 2
ARTICLE 11
LIMITATION OF ACTIONS

2-1101 Limitations applicable.
2-1102 Limitation of real actions.
2-1103 Persons under disability-- in real property actions.
2-1104 Limitation of other actions.
2-1105 Persons under disability in actions other than real property actions.
2-1106 Absence or flight of defendant.
2-1107 Limitation of new action after failure.
2-1108 Extension of limitation.
2-1109 Statutory bar absolute.
2-1110 Law governing foreign claims.
2-1111 Limitation of building construction tort claims.

2-1101 Limitations applicable. Civil actions can only be commenced within the periods prescribed in this Article after the cause of action shall have accrued; but where, in special cases, a different limitation is prescribed by statute, the action shall be governed by such limitation. There shall be no statute of limitation applicable against civil actions brought by the Tribe on its own behalf except to the extent that a statute of limitation is expressly stated to be applicable to the Tribe by this Code or some Tribal statute. [TCR 86-109]

2-1102 Limitation of real actions. Actions for the recovery of real property or for the determination of any adverse right of interest therein, can only be brought within the periods hereinafter prescribed, after the claim shall have accrued, and at no other time thereafter.

1. An action for the recovery of non-trust interest in real property sold on execution, or for the recovery of real estate petitioned by judgment in kind, or sold, or conveyed pursuant to petition proceedings, or other judicial sale, or an action for the recovery of real estate distributed under decree of the Court, in administration or probate proceedings, when brought by or on behalf of the execution debtor or former owner, or his/her or their heirs, or any person claiming under him/her or them by title acquired after the date of the judgment or by any person claiming to be an heir or devisee of the decedent in whose estate such decree was rendered, or claiming under, as successor in interest, any such heir or devisee, within five years after the date of the recording of the deed made in pursuance of the sale or proceeding, or within five years after the date of the entry of the final judgment of partition in kind where no sale is had in the partition proceedings; or within five years after the recording of the decree of distribution rendered by the Court in an administration or probate proceeding; provided, however, that where any such action pertains to real estate distributed under decree of the Court in administration or probate proceedings and would at the passage of this Article be barred by the terms hereof, such action may be brought within five years after the passage of this Act.
2. An action for recovery of real property sold by executors, administrators, or guardians, upon an order of judgment of a Court directing such sale, brought by the heirs or devisees of the deceased person, or the ward of his/her guardian, or any person claiming under any or either of them, by the title acquired after the date of judgment or order, within five years after the date of the recording the deed made in pursuance of the sale.
3. An action for the recovery of real property sold for taxes, within five years after the date of the recording of the tax deed.
4. An action for recovery of real property not hereinbefore provided for, within twenty years.
5. An action for the forcible entry and detention or forcible entry only of real property, within three years.

6. Paragraphs (1), (2), and (3) shall be fully operative regardless of whether the deed or judgment or the precedent action or proceeding upon which such deed or judgment is based is void or voidable in whole or in part, for any reason, jurisdictional or otherwise; provided that this paragraph shall not be applied so as to bar causes of action which have heretofore accrued, until the expiration of five years from and after its effective date.
7. Nothing in this Section should be construed to impose any statute of limitation upon the enforcement of a right to possession of real property held by the United States in trust for any Indian or Indian Tribe under any law of the United States or restricted against alienation by any law of the United States in uniformity to the laws of the United States relating to such real property. [TCR 86-109]

2-1103 Persons under disability--in real property actions. Any person entitled to bring an action for the recovery of real property, who may be under any legal disability when the cause of action accrues, may bring his/her action within two years after the disability is removed. [TCR 86-109]

2-1104 Limitation of other actions. Civil actions other than for the recovery of real property can only be brought within the following periods, after the cause of action shall have accrued, and not afterwards:

1. Within seven years: An action upon any contract, agreement or promise in writing.
2. Within five years: An action upon a contract express or implied not in writing; an action upon a liability created by statute including a forfeiture or penalty except where the statute imposes a different limitation and an action of a foreign judgment.
3. Within three years: An action for trespass upon real property; an action for taking, detaining, or injuring personal property, including actions for the specific recovery of personal property; an action for injury to the rights of another, not arising on contract except as otherwise provided in building construction tort claims, and not hereinafter enumerated; an action for relief on the ground of fraud--the cause of action in such case shall not be deemed to have accrued until the discovery of the fraud.
4. Within one year: An action for libel, slander, assault, battery, malicious prosecution, or false imprisonment.
5. An action upon the official bond or undertaking of an executor, administrator, guardian, Tribal police officer, or any other officer, or upon the bond or undertaking given in an attachment, injunction, arrest or in any case whatever required by the statute, can only be brought within five years after the cause of action shall have accrued. [TCR 86-109, 94-07]

2-1105 Persons under disability in actions other than real property actions. If a person entitled to bring an action other than for the recovery of real property be, at the time the cause of action accrued, under any legal disability, every such person shall be entitled to bring such action within one year after such disability shall be removed. [TCR 86-109]

2-1106 Absence or flight of defendant. When a cause of action accrues against a person and that person is out of the Tribal jurisdiction or has concealed him/herself, the period limited for the commencement of the action shall not begin to run until he/she comes into the Tribal jurisdiction, or while he/she is concealed. If, after a cause of action accrues against a person and that person leaves the Tribal jurisdiction or conceals him/herself, the time of his/her absence or concealment shall not be computed as any part of the period within which the action must be brought. Provided, however, that if any statute which extends the exercise of personal jurisdiction of the Court over a person or corporation based upon service outside the Tribal jurisdiction, state, or nation, or based upon service by publication permits the Court of this Tribe to acquire personal jurisdiction over the person, the period of his/her absence or

concealment shall be computed as part of the period within which the action must be brought. [TCR 86-109]

2-1107 Limitation of new action after failure. If any action is commenced within due time, and a judgment thereon for the plaintiff is reversed, or if the plaintiff fails in such action otherwise than upon the merits, the plaintiff, or, if he/she should die, and the cause of action survive, his/her representatives may commence a new action within two years after the reversal or failure although the time limit for commencing the action shall have expired before the new action is filed. An appeal of any judgment or order against the plaintiff other than on the merits as above stated shall toll the two year period during the pendency of the appeal. [TCR 86-109]

2-1108 Extension of limitation. In any case founded on contract, when any part of the principal or interest shall have been paid, or an acknowledgment of an existing liability, debt or claim, or any promise to pay the same shall have been made, an action may be brought in such case within the period prescribed for the same, after such payment, acknowledgment or promise; but such acknowledgment or promise must be in writing, signed by the party to be charged thereby. [TCR 86-109]

2-1109 Statutory bar absolute. When a right of action is barred by the provisions of any statute, it shall be unavailable either as a cause of action or ground of defense, except as otherwise provided with reference to a counterclaim, setoff, or cross-claim. [TCR 86-109]

2-1110 Law governing foreign claims. The period of limitation applicable to a claim accruing outside of the Tribal jurisdiction shall be that prescribed either by the law of the place where the claim accrued or by the law of this Tribe, whichever last bars the claim. [TCR 86-109]

2-1111 Limitation of building construction tort claims. No action to recover damages (1) for any deficiency in the design, planning, supervision or observation of construction or construction of an improvement to real property, (2) for injury to property, real or personal, arising out of any such deficiency, or (3) for injury to the person or for wrongful death arising out of any such deficiency, shall be brought against any person owning, leasing, or in possession of such an improvement or performing or furnishing the design, planning, supervision or observation of construction or construction of such an improvement more than ten years after the substantial completion of such an improvement. [TCR 86-109]

TITLE 2
ARTICLE 12
FAMILY RELATIONS

2-1201 Recording of marriages and divorces.
2-1202 Tribal custom marriage and divorce.
2-1203 Tribal custom adoption.
2-1204 Determination of paternity and support.
2-1205 Determination of heirs.
2-1206 Approval of wills.

2-1201 Recording of marriages and divorces. All marriages and divorces to which an Indian person is a party, whether consummated in accordance with the state law or in accordance with Tribal law or custom, shall be recorded in writing executed by both parties thereto within three months at the office of the clerk of the Tribal Court in the marriage record and a copy thereof delivered to Bureau of Indian Affairs agency of the jurisdiction in which either or both of the parties reside for agency records.
[TCR 86-109, 94-07]

2-1202 Tribal custom marriage and divorce.

1. Indians who desire to become married or divorced by the custom and common law of the Tribe shall conform to the custom and common law of the Tribe. Indians who assume or claim a divorce by Tribal common law and custom shall not be entitled to remarry until they have complied with the Tribal common law and remain separated for six months as in the case of statutory divorces, nor until they have recorded such divorce at the office of the clerk of the Tribal Court with a copy delivered to the Bureau of Indian Affairs agency for agency records.
2. The validity of Indian custom marriage and divorce shall continue to be recognized as heretofore.
3. In any case wherein the marital status of an Indian person is at issue, the Court shall have full authority to determine the marital status or the parties to any purported Tribal common law marriage or divorce and enter its declaratory judgment thereon. [TCR 94-07]

2-1203 Tribal custom adoption. Tribal custom adoptions shall continue to be recognized and shall be fully recognized by the Court, without the necessity of filing any document, when proven for the purpose of establishing extended family status in child custody actions, determining child custody, the obligation to support children, and other family matters. However, Tribal common law adoptions shall not be recognized for the purpose of probate of descendant's estates unless, prior to the death of the descendant, the common law adoption was formalized by action of the Tribal Court, or in the case of adults, by a writing acknowledging such adoption filed in the Tribal Court. A Tribal common law adoption as a child of another does not terminate parental rights of the parents, nor deprive the natural parents of their ultimate right to the custody of a child who is adopted by another pursuant to the Tribal common law.
[TCR 86-109]

2-1204 Determination of paternity and support. The Tribal Court shall have jurisdiction of all suits brought to determine the paternity of a child and to obtain a judgment for the support of the child. A judgment of the Court establishing the identity of the father of the child shall be conclusive of that fact in all subsequent determinations of inheritance by the Department of the Interior or by the Tribal Court.
[TCR 86-109, 94-07]

2-1205 Determination of heirs.

1. When any member of the Tribe dies within the Tribal jurisdiction or while owning a non-trust interest in land within the Tribal jurisdiction, leaving property other than an allotment or other trust property subject to the jurisdiction of the United States, any person claiming to be an heir of the decedent and may bring suit in the Tribal Court to determine the heirs of the decedent and to divide among the heirs such property of the decedent. No determination of heirs shall be made unless all the possible heirs known to the Court, to the superintendent of the Indian Agency, and to the claimant have been notified of the suit as in service of summons and given full opportunity to come before the Court and defend their interests. Possible heirs who are not residents of the Tribal jurisdiction may be notified by certified mail, return receipt requested, and if said notice is returned refused or otherwise unclaimed, by further first class mail containing a copy of the original notice and an additional notice stating to the recipient that the action will proceed ten days after mailing of the second notice. A copy of every such notice must be preserved in the record of the case.
2. In the determination of heirs the Tribal Court shall apply the written laws of the Tribe or the custom of the Tribe as to inheritance if such custom is proved and no written law exists. Otherwise, the Court shall apply state law in deciding what relatives of the decedent are entitled to be his/her heirs.
3. Where the estate of the decedent includes any interest in restricted allotted lands or other property held in trust by the United States, over which the administrative law judge would have jurisdiction, the Tribal Court may distribute only such property as does not come under the jurisdiction of the administrative law judge. [TCR 86-109, 94-07]

2-1206 Approval of wills. When any member of the Tribe dies while domiciled within the Tribal jurisdiction or while owning non-trust interest in land within the Tribal jurisdiction, leaving a will disposing of property other than an allotment or other trust property subject to the jurisdiction of the United States, the Tribal Court shall, at the request of any person named in the will or any other interested party, determine the validity of the will after giving notice and full opportunity to appear in Court to all persons who might be heirs of the decedent, as under the preceding section. A will shall be deemed valid if the decedent has a sane mind and was not subject to any undue influence of any kind from another person, and if the will was made in accordance with Tribal law or custom or made in writing and signed by the decedent in the presence of two witnesses who also sign the will. If the Court determines the will to be validly executed, it shall order the property described in the will to be given to the persons named in the will or to their heirs; but no distribution of property shall made in violation of a Tribal law or proven Tribal custom which restricts the privilege of Tribal members to distribute property by will. [TCR 86-109, 94-07]

TITLE 2
ARTICLE 12, FAMILY RELATIONS
SUBPART A
STATUTORY DIVORCE

2-1211 Grounds for divorce.
2-1212 Residence of plaintiff or defendant.
2-1213 Personal jurisdiction.
2-1214 Custody of children, disposition of property.
2-1215 Orders concerning property, children, support and expenses.
2-1216 Care and custody of children.
2-1217 Preference of child.
2-1218 Paternity determination.
2-1219 Interest on delinquent payments.
2-1220 Restoration of wife's maiden name.
2-1221 Disposition of property.
2-1222 Effect of divorce.
2-1223 Remarriage and cohabitation.
2-1224 Punishment for certain remarriage and cohabitation.
2-1225 Remarriage within six months.
2-1226 Time when judgment final.
2-1227 Avoidance of marriage of incompetents.
2-1228 Alimony without divorce.
2-1229 Evidence.
2-1230 Setting aside of divorce decrees.
2-1231 Termination of money payments.
2-1232 Mailing of alimony and support payments.
2-1233 Modification of decree.
2-1234 Effect on common law divorce.
2-1235 Requirement of parenting education.

2-1211 Grounds for divorce. The district Court may grant a divorce for any of the following causes:

1. Abandonment for one year.
2. Adultery.
3. Impotency.
4. When the wife at the time of her marriage, was pregnant by another than her husband.
5. Extreme cruelty.
6. Fraudulent contract.
7. Incompatibility.
8. Habitual drunkenness.
9. Gross neglect of duty.
10. Imprisonment of the other party in a state or federal penal institution under sentence thereto for the commission of a felony at the time the petition is filed.
11. Insanity for a period of five years. The fact and duration of insanity being proved by the testimony of two physicians. Such divorce does not relieve the sane spouse from the obligation and support and shall not be granted unless a guardian has been appointed. [TCR 86-109, 94-07]

2-1212 Residence of plaintiff or defendant. Either the plaintiff or the defendant in an action for divorce must have been an actual resident, in good faith, of the Tribal jurisdiction for three months next preceding the filing of the petition, or a member of the Tribe. [TCR 86-109]

2-1213 Personal jurisdiction. The Court may exercise personal jurisdiction over a person whether or not a resident of the Tribal jurisdiction who lived within the Tribal jurisdiction in a marital or parental relationship, or both, as to all obligations for alimony and child support where the other party to the marital relationship continues to reside in the Tribal jurisdiction. When the person who is subject to the jurisdiction of the Court has departed from the Tribal jurisdiction, he/she may be served outside of the

Tribal jurisdiction by any method that is authorized by the statutes of the Tribe. In all other cases, the Court may grant a divorce but may not enter a personal judgment for alimony or child support.
[TCR 86-109]

2-1214 Custody of children, disposition of property. That the parties appear to be in equal wrong shall not be a basis for refusing to grant a divorce. If a divorce is granted, it shall be granted to both parties. In any such case or where the Court grants alimony without a divorce or in any case where a divorce is refused, the Court may for good cause shown make such order as may be proper for the custody, maintenance and education of the children, and for the control and equitable division and disposition of the property of the parties, or of either of them, as may be proper, equitable and just, having due regard to the time and manner of acquiring such property, whether the title thereto be in either or both of said parties. In making a property settlement, the Court shall have due regard for the needs of the family and justice to the parties. [TCR 86-109]

2-1215 Orders concerning property, children, support and expenses. After a petition has been filed in an action for divorce and alimony, or for alimony alone, the Court may make and enforce by attachment or otherwise, such order to restrain the disposition of the property of the parties or of either of them, and for the use, management, and control thereof, or for the control of the children and support of the wife or husband during the pendency of the action, as may be right and proper; and may also make such order relative to the expenses of the suit as will insure an efficient preparation of the case; and, on granting a divorce the Court may require the husband or wife to pay such reasonable expenses of the other in the prosecution or defense of the action as may be just and proper considering the respective parties and the means and property of each; provided further, that the Court may in its discretion make additional orders relative to the expenses of any such subsequent actions, brought by the parties or their attorneys, for the enforcement or modification of any interlocutory or final orders in the divorce action made for the benefit of either party or their respective attorneys. Provided, no ex parte orders shall be issued until the opposing party is granted an opportunity to be heard, unless such ex parte order provides that instead of performing thereunder the opposing party may appear on a date certain, not more than twenty days thereafter, and show good cause as to why he/she should not comply with said order. [TCR 86-109]

2-1216 Care and custody of children. A petition or cross-petition for a divorce, legal separation, or annulment must state whether or not parties have minor children of the marriage. If there are such children, the Court shall make provision for guardianship, custody, support and education of the minor children, and may modify or change any order in this respect, whenever circumstances render such change proper either before or after final judgment in the action.
Any child, not emancipated and declared an adult by Court order shall be entitled to support by the parents until the child reaches eighteen years of age. If the Court determines that the parents are unable to provide for the support of the children, it may order any person obligated to support the children by the Tribal common law to be brought into the action by service of summons, and may enter an order requiring said person to contribute to the support of the children within their means. [TCR 86-109]

2-1217 Preference of child. In any divorce action in which the Court must determine custody, the child may express a preference as to which of its parents the child wishes to have custody. The Court may determine whether the best interest of the child will be served by the expression of preference and if the Court so finds then the Court may consider the expression of preference by the child in determining custody. Provided, however, the Court shall not be bound by that choice and may take other facts into consideration in awarding custody. [TCR 86-109]

2-1218 Paternity determination. In an action for a divorce, legal separation or annulment where there are children born to the parties, the Court may determine if the parties to the action are the parents of the children although the Court finds that the parties are not married; and if the parties to the action are the parents of the children, the Court may determine which party should have custody of said children, and it may award child support to the parent to whom it awards custody, and make an appropriate order for payment of costs and attorney's fees. [TCR 86-109]

2-1219 Interest on delinquent payments. When ordered by the Court, Court-ordered child support payments and Court-ordered payment of suit monies shall draw interest at the rate of ten percent per year from the date they become delinquent, and the interest shall be collected in the same manner as the payments upon which the interest accrues. [TCR 86-109]

2-1220 Restoration of wife's maiden name. When a divorce is granted, the wife shall be restored to her maiden or former name if she so desires. [TCR 86-109]

2-1221 Disposition of property. The Court shall enter its decree confirming in each spouse the property owned by him or her before marriage and the undisposed-of property acquired after marriage by him or her in his or her own right. Either spouse may be allowed such alimony out of real and personal property of the other as the Court shall think reasonable, having due regard to the value of such property at the time of the divorce. Alimony may be allowed from real or personal property, or both, or in the form of money judgment, payable either in gross or in installments, as the Court may deem just and equitable. As to such property, whether real or personal, which has been acquired by the parties jointly during their marriage, whether the title thereto be in either or both of said parties, the Court shall make such division between the parties as may appear just and reasonable, by a division of the property in kind, or by setting the same apart to one of the parties, and requiring the other thereof to pay such sum as may be just and proper to effect a fair and just division thereof having due regard to the needs of the family. The Court may set apart a portion of the separate estate of a spouse to the other spouse for the support of the children of the marriage where custody resides with that spouse. [TCR 86-109]

2-1222 Effect of divorce. A divorce granted at the instance of one party shall operate as a dissolution of the marriage contract as to both, and shall be a bar to any claim of either party in or to the property of the other, except in cases where actual fraud shall have been committed by or on behalf of the successful party. [TCR 86-109]

2-1223 Remarriage and cohabitation. It shall be unlawful for either party to an action for divorce whose former husband or wife is living to marry a person other than the divorced spouse within six months from date of the decree of divorce or to cohabit with such other person during said period and if an appeal be commenced from said decree, it shall be unlawful for either party to such cause to marry any other person and cohabit with such person until the expiration of thirty days from the date on which final judgment shall be entered pursuant to such appeal. Any person violating the provisions of this Section by such marriage shall be deemed guilty of bigamy. Any person violating the provisions of this Section by such cohabitation shall be deemed guilty of adultery. An appeal from a judgment granting or denying a divorce shall be made in the same manner as in any other civil case. [TCR 86-109]

2-1224 Punishment for certain remarriage and cohabitation. Every person convicted of bigamy as such offense is defined in the foregoing section shall be punished by imprisonment in the Tribal jail for a term of not more than six months. [TCR 86-109]

2-1225 Remarriage within six months. A marriage wherein one of the parties had not been divorced for six months shall hereafter be ground for annulment of marriage by either party. [TCR 86-109]

2-1226 Time when judgment final. Every decree of divorce shall recite the day and date when the judgment was rendered. If an appeal be taken from a judgment granting or denying a divorce, that part of the judgment does not become final and take effect until the appeal is determined. If an appeal be taken from any part of the judgment in a divorce action except the granting of the divorce, the divorce shall be final and take effect the date the decree of divorce is rendered, provided neither party thereto may marry another person until six months after the date the decree of divorce is rendered; that part of the judgment appealed shall not become final and take effect until the appeal be determined. [TCR 86-109]

2-1227 Avoidance of marriage of incompetents. When either of the parties to a marriage shall be incapable, from want of age or understanding, of contracting such marriage, the same may be declared void by the Tribal Court, in an action brought by the incapable party or by the parent or guardian of such party; but the children of such marriage begotten before the same is annulled, shall be legitimate. Cohabitation after such incapacity ceases, shall be a sufficient defense to any such action. [TCR 86-109, 94-07]

2-1228 Alimony without divorce. The wife or husband may obtain alimony from the other without a divorce, in an action brought for that purpose in the Tribal Court, for any of the causes for which a divorce may be granted. Either may make the same defense to such action as he/she might to an action for divorce, and may, for sufficient cause, obtain a divorce from the other in such action. [TCR 86-109, 94-07]

2-1229 Evidence. No divorce shall be granted without proof taken upon the record as in other cases. [TCR 86-109]

2-1230 Setting aside of divorce decrees. When a decree of divorce has been issued by the Tribal Court, said Court is hereby authorized to dissolve said decree at any future time, provided that both parties to the divorce action file a petition, signed by both parties, asking that said decree be set aside and held for naught. And further provided that both parties seeking to have the decree set aside shall make proof to the Court that neither one has married a third party during the time since the issuance of the decree of divorce. [TCR 86-109, 94-07]

2-1231 Termination of money payments.

1. In any divorce decree which provides for periodic alimony payments, the Court shall plainly state, at the time of entering the original decree, what dollar amount of all or a portion of each such payment is designated as support, and what dollar amount of all or a portion of such payment is a payment pertaining to a division of property. Upon the death of the recipient, the payments for support if not already accrued, shall terminate, but the payments pertaining to a division of property shall continue until completed; and the decree shall so specify. The payments pertaining to a division of property shall be irrevocable. Upon the presentation of proper proof of death of such recipient, the Court shall order the judgment for the payment of support to be terminated, and lien thereof released unless a proper claim shall be made for any amount of past due support payments by an executor, administrator or heir within ninety days from the date of death of the recipient. The Court shall also provide in the divorce decree that any such payment of support shall terminate after remarriage of the recipient, unless the recipient can make a proper showing that some amount of support is still needed and that circumstances have not rendered payment of the same inequitable. Provided however, that unless the recipient shall commence an action for

such determination within ninety days of the date of such remarriage, the Court shall, upon proper application, order the payment of support terminated and the lien thereof discharged.

2. An order for continuing the payments of support shall not be a lien against the real property of the person ordered to make such payments unless the Court order specifically provides for lien on real property or an arrearage in such payments of support has been reduced to a judgment.
3. The voluntary cohabitation of a former spouse with a member of the opposite sex shall be a ground to modify provisions of a final judgment or order for alimony as support. If voluntary cohabitation is alleged in a motion to modify the payment of support, the Court shall have jurisdiction to reduce or terminate support payments upon proof of substantial change of circumstances relating to need for support or ability to support. As used herein, cohabitation shall mean the dwelling together continuously and habitually of a man and a woman who are in a private conjugal relationship not solemnized as marriage according to law, or not necessarily meeting all the standards of a common law marriage. The petitioner shall make application for modification and shall follow notification procedures as used in other divorce decree modification actions. [TCR 86-109]

2-1232 Mailing of alimony and support payments. If a judicial order, judgment or decree directs that the payment of child support, alimony, temporary support or any similar type of payment be made through the office of the Court clerk, then it shall be the duty of the Court to transmit such payments to the payee by first class United States mail, if requested to do so by the payee. Such payments shall be mailed to the payee at the address specified in writing by the payee. In the event of a change in address of the payee, it shall be the duty of payee to furnish to the Court clerk in writing the new address of the payee.
[TCR 86-109]

2-1233 Modification of decree. Notwithstanding that a decree of divorce has become final, the Court may modify its judgment relative to child support or alimony at any time in the interest of justice and equity, having due regard for the needs of the family or families of the parties, upon motion for modification filed in the original action and served with summons requiring an answer to said motion within twenty days. Such motions shall be heard as if they were an independent proceeding and discovery may be had. The order of the Court determining the motion for modification shall be a final appealable order. [TCR 86-109]

2-1234 Effect on common law divorce. This subpart shall not be interpreted in derogation of the Tribal common law of divorce, but is intended for use by those who prefer the statutory method of divorce or who cannot agree as to child custody and support, spousal support, property division, or other similar matters upon which agreement is necessary to effectuate a Tribal common law divorce. [TCR 86-109]

2-1235 Requirement of parenting education.

a. Any party to a divorce action or an action involving child custody or visitation shall be required by the Court to complete a parenting education course pursuant to this Section prior to the entry by the Court of a final judgment or order modifying the final judgment in such action. The Court must approve the course, and participation in the course may be delayed or waived by the Court for good cause shown.
b. A parenting education course pursuant to this Section shall be designed to educate the parties about the impact of the pending divorce, custody, or visitation action upon their children. The course shall include but not be limited to, information on the developmental stages of children, adjustment of children to parental separation, dispute resolution and conflict management, guidelines for visitation, stress reduction in children, and cooperative parenting.

c. Each party shall be responsible for the costs, if any, of attending a Court-ordered parenting education course. The Court may specifically allocate costs between the parties for their required participation in the course.

d. At the request of any party, the parties shall be allowed to attend separate courses or to attend the same course at different times, specifically if violence has been present in the relationship or one party has threatened the other party with violence.

TITLE 2
ARTICLE 13
FORCIBLE ENTRY AND DETAINER

2-1301 Forcible entry and detention.
2-1302 Powers of Court.
2-1303 Extent of jurisdiction.
2-1304 Issuance and return of summons.
2-1305 Service of summons.
2-1306 Constructive service of summons.
2-1307 Answer or affidavit by defendant.
2-1308 Trial by Court.
2-1309 Procedure where no jury available.
2-1310 Attorney fee.
2-1311 Writ of execution; form; new trial.
2-1312 Stay of execution.
2-1313 Forcible entry and detainer action on small claims docket.
2-1314 Affidavit; form.
2-1315 Summons; form.

2-1301 Forcible entry and detention. The Tribal Court shall have jurisdiction to try all actions for the forcible entry and detention, or detention only, of real property, and claims for the collection of rent or damages to the premises may be included in the same action, but other claims may not be included in the same action. A judgment in an action brought under this Article shall be conclusive as to any issues adjudicated therein, but it shall not be a bar to any other action brought by either party.
[TCR 86-109, 94-07]

2-1302 Powers of Court. The Court shall have power to inquire, in the manner hereinafter directed, as well against those who make unlawful and forcible entry into lands and tenements, and detain the same, as against those who, having a lawful and peaceable entry into land or tenements, unlawfully and by force hold the same, and if it be found, upon such inquiry, that an unlawful and forcible entry has been made, and that the same lands and tenements are held unlawfully, then the Court shall cause the party complaining to have restitution thereof. [TCR 86-109]

2-1303 Extent of jurisdiction. Proceedings under this Article may be had in all cases against tenants holding over their terms and, incident thereto, to determine whether or not tenants are holding over their terms; in sales or real estate on executions, orders or other judicial process, when the judgment debtor was in possession at the time of the rendition of the judgment or decree, by virtue of which such sale was made; in sales by executors, administrators, guardians and on partition, where any of the parties to the partition were in possession at the commencement of the suit, after such sales, so made, on execution or otherwise, shall have been examined by the Court, and the same adjudged valid; and in the cases where the defendant is a settler or occupier of lands and tenements without color of title, and to which the complainant has the right of possession. This Section is not to be construed as limiting the provisions of the preceding section. [TCR 86-109]

2-1304 Issuance and return of summons. The summons shall be issued and returned as in other cases, except that it shall command the chief of the Tribal police or other person serving it, to summon the defendant to appear for trial at the time and place specified therein, which time shall be not less than five days nor more than ten days from the date that the summons is issued. The summons shall appraise the defendant of the nature of the claim that is being asserted against him; and there shall be endorsed upon the summons the relief sought and the amount for which the plaintiff will take judgment if the defendant fails to appear. In all cases, pleadings may be amended to conform to the evidence. [TCR 86-109, 94-07]

2-1305 Service of summons. The summons may be served as in other cases except that such service shall be at least three days before the day of trial, and the return day shall not be later than the day of trial,

and it may also be served by leaving a copy thereof with some person over fifteen years of age, residing on the premises, at least three days before the day of trial; or, if service cannot be made by the exercise of reasonable diligence on the tenant or on any person over the age of fifteen years residing on the premises, the same may be served by registered mail with return receipt postmarked at least three days before the date of trial. [TCR 86-109]

2-1306 Constructive service of summons. If, in the exercise of reasonable diligence, service cannot be made upon the defendant personally nor upon any person residing upon the premises over fifteen years of age, then in lieu of service by registered mail, service may be obtained for the sole purpose of adjudicating the right to restitution of the premises by the Tribal Police's posting said summons conspicuously on the building on the premises, and, if there be no building on said premises, then by posting the same at some conspicuous place on the premises sought to be recovered at least ten days prior to the date of trial, and by last-known address by registered or certified mail at least seven days prior to said date of trial. Such service shall confer no jurisdiction upon the Court to render any judgment against the defendant for the payment of money nor for any relief other than the restoration of possession of the premises to the claimant. Such service shall not be rendered ineffectual by the failure of the defendant to actually receive or sign a return receipt for such mailed process. [TCR 86-109, 94-07]

2-1307 Answer or affidavit by defendant.

1. In all cases in which the defendant wishes to assert title to the land or that the boundaries of the land are in dispute, he/she shall, before the time for the trial of the cause, file a verified answer or an affidavit which contains a full and specific statement of the facts constituting his/her defense of title or boundary dispute. If the defendant files such a verified answer or affidavit, the action shall proceed as one in ejectment before the Tribal Court. If the defendant files an affidavit, he/she shall file answer within ten days after the date the affidavit is filed.
2. In all cases in which the cause of action is based on an asserted breach of a lease by the defendant, or the termination or expiration of a lease under which the defendant claims an interest in the property in a verified answer or affidavit, the plaintiff may proceed with the forcible entry and detainer action instead of an ejectment action.
3. No answer by the defendant shall be required before the time for trial of the cause. [TCR 86-109, 94-07]

2-1308 Trial by Court. All cases for forcible entry and detainer or detainer only shall be tried by the Court unless the rent and damages prayed for exceeds ten thousand ($10,000) dollars. [TCR 86-109]

2-1309 Procedure where no jury available. If a jury be properly demanded by either party, and no jury is available from the general panel, the judge shall immediately direct that an open venire be issued to the chief of the Tribal police or one of his deputies, for such number of jurors as may be deemed necessary, to be selected without resorting to the jury wheel. The persons selected shall have the qualifications of jurors. [TCR 86-109, 94-07]

2-1310 Attorney fee. A reasonable attorney fee shall be allowed by the Court to the prevailing party. [TCR 86-109]

2-1311 Writ of execution; form; new trial. If judgment be for plaintiff, the Court shall, at the request of the plaintiff, his/her agent or attorney, issue a writ of execution thereon, which shall be in substantially the following form:

The [Tribe]. The [Tribe] to the Chief of the Tribal Police:

Whereas, in a certain action for the forcible entry and detention [or for the forcible detention as the case may be] of the following described premises, to wit: _____ before me, wherein, _____ was plaintiff, and _____ was defendant, judgment was rendered on the ___ day of _____, 20__, that the plaintiff have restitution of said premises; and also that he/she recover rent, attorney fees and costs in the sum of _____ _____; you, therefore, are hereby commanded to cause the defendant to be forthwith removed from said premises and the said plaintiff to have restitution of the same; also that you levy on the goods and chattel of the said defendant, and make the cost aforesaid, all accruing costs, and of this writ, make legal service and due return.

Witness my hand this ___ day of _____, 20__.

_____
A. B. Judge

A motion for a new trial may be filed only within three days of judgment but shall not operate to stay execution. [TCR 86-109, 94-07]

2-1312 Stay of execution. If no supersedeas bond be posted within the time provided herein, the officer shall forthwith restore the plaintiff to possession of the premises by executing the writ prescribed in the preceding section and shall make levy to collect the amount of the judgment and all accruing costs. The officer's return shall be as upon other executions. [TCR 86-109]

2-1313 Forcible entry and detainer action on small claims docket. An action for forcible entry and detainer brought pursuant to procedures prescribed otherwise in this Title standing alone and when joined with a claim for recovery of rent, damages to the premises, where the total recovery sought, exclusive of attorney's fees and other Court costs, does not exceed the jurisdictional amount for the small claims Court, shall be placed on the small claims docket of the Tribal Court. The Court clerk shall in connection with such actions prepare the affidavit, by which the action is commenced, and the summons and generally assist the unrepresented plaintiffs to the same extent that he/she is now required so to do under the Small Claims Procedure Act. [TCR 86-109, 94-07]

2-1314 Affidavit; form. The actions for unlawful entry and detainer standing alone or when joined with a claim for collection of rent or damages to the premises, or both, shall be commenced by filing an affidavit in substantially the following form with the clerk of the Court:

In the Tribal Court, [Name of Tribe] Tribe,

_____
Plaintiff

vs.

_____
Defendant

[Tribe]

AFFIDAVIT

_____, being duly sworn, deposes and says;
The defendant resides at _____, and defendant's mailing address is _____.

The defendant is indebted to the plaintiff in the sum of $_____ for rent and for the further sum of $_____ for damages to the premises rented by the defendant; the plaintiff has demanded payment of said sum[s] but the defendant refused to pay the same and no part of the amount sued for herein has been paid.

_____

Subscribed and sworn to before me this ___ day of _____, 20__.

_____
Notary Public [Clerk or Judge]

[TCR 86-109]

2-1315 Summons; form. The summons to be issued in an action for forcible entry and detainer shall be in the following form:

SUMMONS

The [Name of Tribe] Tribe to the within named defendant:

You are hereby directed to relinquish immediately to the plaintiff herein total possession of the real property described as _____ or to appear and show cause why you should be permitted to retain control and possession thereof.

This matter shall be heard at _____ [Name or address of building], in _____ [Town], _____, [Name of Tribe] Tribe, at the hour of _____ o'clock of ____ day of month, 20__, or at the same time and place three days after service hereof, whichever is the latter. [This date shall be not less than five days from the date summons is issued.] You are further notified that if you do not appear on the date shown, judgment will be given against you as follows:

For the amount of the claim for deficient rent and/or damages to the premises, as it is stated in the affidavit of the plaintiff and for possession of the real property described in said affidavit, whereupon a writ of assistance shall issue directing the Tribal police to remove you from said premises and take possession thereof.

In addition, a judgment for costs of the action, including attorney's fees and other costs, may also be given.

Dated this ___ day of _____, 20__.

_____
Clerk of Court [or Judge]

_____
Plaintiff or Attorney

_____
Address

_____
Telephone Number

[TCR 86-109, 94-07]

TITLE 2
ARTICLE 14
HABEAS CORPUS

2-1401 Persons who may prosecute writ.
2-1402 Application for writ.
2-1403 Writ granted.
2-1404 Direction and command of writ.
2-1405 Delivery to Tribal police chief.
2-1406 Service on party other than Tribal police chief.
2-1407 Service when person not found.
2-1408 Return and enforcement of writ.
2-1409 Manner of return.
2-1410 Proceedings in case of sickness or infirmity.
2-1411 Hearings and discharge.
2-1412 Limits on inquiry.
2-1413 Writ upon temporary commitment.
2-1414 Writ may issue to admit to bail.
2-1415 Notice to interestedpersons.
2-1416 Powers of Court.
2-1417 Officers not liable for obeying orders.
2-1418 Issuance of warrant of attachment.
2-1419 Arrest of party causing restraint.
2-1420 Execution of warrant of attachment.
2-1421 Temporary orders.
2-1422 Issuance and service on Sunday.
2-1423 Issue of process.
2-1424 Protection of infants and insane persons.
2-1425 Security for costs not required.

2-1401 Persons who may prosecute writ. Every person restrained of his/her liberty, under any pretense whatever, may prosecute a writ of habeas corpus to inquire into the cause of the restraint, and shall be delivered therefrom when the restraint is illegal. [TCR 86-109]

2-1402 Application for writ. Application for the writ shall be made by petition, signed and verified either by the plaintiff or by some person in his/her behalf, and shall specify:

1. By whom the person, in whose behalf the writ is requested, is restrained of his/her liberty, and the place where restrained, naming all the parties, if they are known, or describing them, if they are not known.
2. The cause or pretense of the restraint, according to the best knowledge and belief of the applicant.
3. If the restraint be alleged to be illegal, in what the illegality consists. [TCR 86-109]

2-1403 Writ granted. Writs of habeas corpus may be granted by any judge or magistrate of the Tribal Court, either in open Court, or in vacation; and upon application the writ shall be granted without delay. [TCR 86-109, 94-07]

2-1404 Direction and command of writ. The writ shall be directed to the officer or party having the person under restraint, commanding him to have such person before the Court, or judge, at such time and place as the Court or judge shall direct, to show cause if any he/she has for the restraint imposed upon the person on whose behalf the writ is issued, to do and receive what shall be ordered concerning him/her and have then and there the writ in his/her possession. [TCR 86-109]

2-1405 Delivery to Tribal police chief. If the writ be directed to the chief of the Tribal police, it shall be delivered by the Clerk to him/her without delay. [TCR 86-109, 94-07]

2-1406 Service on party other than Tribal police chief. If the writ be directed to any other person, it shall be delivered to the chief of the Tribal police and shall be by him/her served by delivering to such person without delay. [TCR 86-109, 94-07]

2-1407 Service when person not found. If the person to whom such writ is directed cannot be found, or shall refuse admittance to the chief of the Tribal police, the same may be served by leaving it at the residence of the person to whom it is directed, or by affixing the same on some conspicuous place, either of his/her dwelling house or where the party is confined under restraint. [TCR 86-109, 94-07]

2-1408 Return and enforcement of writ. The chief of the Tribal police or other person to whom the writ is directed shall make immediate return thereof, and if he/she neglects or refuses, after due service, to make return, or shall refuse or neglect to obey the writ by producing the party named therein, and no sufficient excuse be shown for such neglect or refusal, the Court shall enforce obedience by attachment. [TCR 86-109]

2-1409 Manner of return. The return must be signed and verified by the person making it, who shall state:

1. The authority or cause of restraint of the party in his/her custody.
2. If the authority be in writing, he/she shall return a copy and produce the original on the hearing.
3. If he/she has had the party in his/her custody or under his/her restraint, and has transferred him/her to another, he/she shall state to whom, the time, place and cause of the transfer. He/she shall produce the party on the hearing, unless prevented by sickness or infirmity or other cause, which must be shown in the return. [TCR 86-109]

2-1410 Proceedings in case of sickness or infirmity. The Court or judge, if satisfied with the truth of the allegation of sickness or infirmity or other good cause for not producing the body of the person, may proceed to decide on the return, or the hearing may be adjourned until the party can be produced. The plaintiff may accept to the sufficiency of, or controvert the return or any part thereof, or allege any new matter in avoidance; the new matter shall be verified, except in cases of commitment on a criminal charge; the return and pleadings may be amended without causing any delay. [TCR 86-109]

2-1411 Hearings and discharge. The Court or judge shall thereupon proceed in a summary way to hear and determine the cause, and if no legal cause be shown for the restraint or for the continuance thereof, shall discharge the party. [TCR 86-109]

2-1412 Limits an inquiry. No judge shall inquire into the legality of any judgment or process, whereby the party is in custody, or discharge him/her when the term of commitment has not expired in either of the cases following:

1. Upon process issued by any Court or judge of the United States, or of any state or where such Court or judge has exclusive jurisdiction; or,
2. Upon any lawful process issued on any final judgment of a Court of competent jurisdiction; or,
3. For any contempt of any Court, office or body having authority to commit; but an order of commitment as for a contempt, upon proceedings to enforce the remedy of a party, is not included in any of the foregoing specifications;
4. Upon a warrant or commitment issued from the Tribal Court, or any other Court of competent jurisdiction, upon indictment or information. [TCR 86-109, 94-07]

2-1413 Writ upon temporary commitment. No person shall be discharged from an order of temporary commitment issued by any judicial or peace officer for want of bail, or in cases not bailable, on account of any defect in the charge or process, or for alleged want of probable cause, but in all such cases, the Court or judge shall summon the prosecuting witnesses, investigate the criminal charge, and discharge, let to bail or recommit the prisoner, as may just and legal, and recognize witnesses when proper. [TCR 86-109]

2-1414 Writ may issue to admit to bail. The writ may be had for the purpose of letting a prisoner to bail in civil and criminal actions. [TCR 86-109]

2-1415 Notice to interested persons. When any person has an interest in the detention, the prisoner shall not be discharged until the person having such interest is notified. [TCR 86-109]

2-1416 Powers of Court. The Court or judge shall have power to require and compel the attendance of witnesses and to do all other acts necessary to determine the case. [TCR 86-109]

2-1417 Officers not liable for obeying orders. No Tribal policeman or other officer shall be liable to a civil action for obeying any writ of habeas corpus or order of discharge or enforcement made thereon. [TCR 86-109, 94-07]

2-1418 Issuance of warrant of attachment. Whenever it shall appear by affidavit that anyone is illegally held in custody or restraint, and that there is good reason to believe that such person will be carried out of the jurisdiction of the Court or judge, or will suffer some irreparable injury before compliance with the writ can be enforced, the Court or judge may cause a warrant of attachment to be issued, reciting the facts, and directed to the chief of the Tribal police, commanding him/her to take the person thus held in custody or restraint, and forthwith bring him/her before the Court or judge, to be dealt with according to law. [TCR 86-109, 94-07]

2-1419 Arrest of party causing restraint. The Court or judge may also, if the same be deemed necessary, insert in the warrant a command for the apprehension of the person charged with causing the illegal restraint. [TCR 86-109]

2-1420 Execution of warrant of attachment. The officer shall execute the Warrant of Attachment by bringing the person therein named before the Court or judge; and the like return and proceedings shall be required and had as in case of writs of habeas corpus. [TCR 86-109]

2-1421 Temporary orders. The Court or judge may make any temporary orders in the cause or disposition of the party during the progress of the proceedings, that justice may require. The custody of any party restrained may be changed from one person to another, by order of the Court or judge.
[TCR 86-109]

2-1422 Issuance and service on Sunday. Any writ, warrant, or process authorized by this Article may be issued and served, in case of emergency on any day including Saturdays, Sundays, and holidays.
[TCR 86-109]

2-1423 Issue of process. All writs and other process, authorized by the provisions of this Article may be issued by the clerk of the Court upon direction of a judge, and except summons, sealed with the seal of such Court and shall be served and returned forthwith, unless the Court or judge shall specify a particular time for any such return. And no writ or other process shall be disregarded for any defect therein, if

enough is shown to notify the officer or person of the purpose of the process. Amendments may be allowed, and temporary commitments, when necessary. [TCR 86-109]

2-1424 Protection of infants and insane persons. Writ of habeas corpus shall be granted in favor of parents, guardians, masters, husbands and wives; and to enforce the rights and for the protection of infants and insane persons; and the proceedings shall, in all such cases, conform to the provisions of the Article. [TCR 86-109]

2-1425 Security for costs not required. No deposit or security for costs shall be required of an applicant for a writ of habeas corpus. [TCR 86-109]

TITLE 2
ARTICLE 15
MANDAMUS

2-1501	Function of mandamus.	2-1507	Answer.
2-1502	Writ not issued where remedy at law.	2-1508	Failure to answer.
2-1503	Forms and contents of writs.	2-1509	Similarity to civil action.
2-1504	When peremptory writ of issues.	2-1510	Recovery by plaintiff.
2-1505	Petition upon affidavit.	2-1511	Damages bar further actions.
2-1506	Allowance and service of writ.	2-1512	Penalty for refusal or neglect to perform.

2-1501 Functions of mandamus. The writ of mandamus may be issued by the appellate Court or the Tribal Court, or any justice or judge thereof to any inferior tribunal, corporation, board or person, to compel the performance of any act which the law specially enjoins as a duty, resulting from an office, trust or station; but though it may require an inferior Tribunal or officer to exercise its judgment or proceed to the discharge of any of its functions, it cannot control judicial discretion, or discretion committed to a Tribal agency by law unless exercised in violation of law. [TCR 86-109, 94-07]

2-1502 Writ not issued where remedy at law. This writ may not be issued in any case where there is a plain and adequate remedy in the ordinary course of the law. It may be issued on the information of the party beneficially interested. [TCR 86-109]

2-1503 Forms and contents of writs. The writ is either alternative or peremptory. The alternative writ must state, concisely, the fact showing the obligation of the defendant to perform the act, and his/her omission to perform it, and command him/her that immediately upon the receipt of the writ, or at some other specified time, he/she do the act required to be performed or show cause before the Court at a specified time and place, why he/she has not done so; and that he/she then and there return the writ with his certificate of having done as he/she commanded. The peremptory writ must be in a similar form, except that the words requiring the defendant to show cause why he/she has not done as commanded, must be omitted. [TCR 86-109]

2-1504 When peremptory writ of issues. When the right to require the performance of the act is clear, and it is apparent that no valid excuse can be given for not performing it, a peremptory mandamus may be allowed in the first instance; in all other cases, the alternative writ must be first issued. The peremptory writ should not be issued if there is any doubt that a valid excuse may exist. [TCR 86-109]

2-1505 Petition upon affidavit. The petition for the writ must be made upon affidavit, and the Court may require a notice of the application to be given to the adverse party, or may grant an order to show cause why it should not be allowed, or may grant the writ without notice. [TCR 86-109]

2-1506 Allowance and service of writ. The allowance of the writ must be endorsed thereon, signed by the judge of the Court granting it, and the writ must be served personally upon the defendant; if the defendant, duly served, neglects to return the same, he/she shall be proceeded against as for contempt. [TCR 86-109]

2-1507 Answer. On the return day of the alternative writ, or such further day as the Court may allow, the party on whom the writ shall have been served may show cause, by answer made in the same manner as an answer to complaint in a civil action. [TCR 86-109]

2-1508 Failure to answer. If no answer be made, a peremptory mandamus must be allowed against the defendant; if answer be made, containing new matter, the same shall not, in any respect, conclude the plaintiff, who may, on the trial or other proceeding, avail him/herself of any valid objections to its sufficiency, or may countervail it by proof, either in direct denial or by way of avoidance. [TCR 86-109]

2-1509 Similarity to civil action. No other pleading or written allegation is allowed than the writ and answer; these are the pleadings in the case, and have the same effect, and are to be construed and may be amended in the same manner, as pleadings in a civil action; and the issued thereby joined must be tried, and the further proceedings thereon had, in the same manner as in a civil action. [TCR 86-109]

2-1510 Recovery by plaintiff. If judgment be given for the plaintiff, he/she shall recover the damages which he/she shall have sustained, to be ascertained by the Court, or by referees, as in a civil action, and costs; and a peremptory mandamus shall also be granted to him/her without delay. [TCR 86-109]

2-1511 Damages bar further actions. A recovery of damages, by virtue of this Article against a party who shall have made a return to a writ of mandamus, is a bar to any other action against the same party for the making of such return. [TCR 86-109]

2-1512 Penalty for refusal or neglect to perform.

1. Whenever a peremptory mandamus is directed to any public officer, body or board, commanding the performance of any public duty specially enjoined by law, if it appear to the Court that such officer, or any member of such body or board, has, without just excuse, refused or neglected to perform the duty so enjoined, the Court may impose a fine, not exceeding five hundred dollars ($500.00), upon every such officer or members of such body or board. Such fine, when collected, shall be paid into the Tribal treasury.
2. Whenever the peremptory writ of mandamus is directed to any private person commanding the performance of any private duty specifically enjoined by law, if it appears to the Court that such person has, without just excuse, refused or neglected to perform the duty so enjoined, the Court may impose a civil fine, not exceeding five hundred dollars ($500.00) upon such person and may commit him/her to the custody of the Tribal police for a term of sixty days or until he/she shall perform or agree to perform such duty or otherwise purge his/her contempt. The Court may, in an appropriate case, order the chief of the Tribal police to perform the act required which performance shall have the same effect as if performed by the person to whom the peremptory writ was issued. [TCR 86-109, 94-07]

TITLE 2
ARTICLE 16
QUO WARRANTO

2-1601 Quo Warranto; relief obtainable by civil action.
2-1602 Grounds for action.
2-1603 Persons who may bring action.
2-1604 Judgment is contest of office.
2-1605 Judgment for plaintiff.
2-1606 Enforcement of judgment.
2-1607 Separate action for damages.
2-1608 Corporation.

2-1601 Quo warranto; relief obtainable by civil action. The writ of quo warranto, and proceedings by information in the nature of quo warranto, are abolished and the remedies heretofore obtainable in those forms may be had by civil action; provided, that such cause of action may be instituted and maintained by the contestant for such office at any time after the issuance of the certificate of election by the Tribal election board, and before the expiration of thirty days after such official is inducted into office; provided further, that all suits now pending, contesting such elections, shall not be dismissed because of the prematurity as to time of their commencement, which shall be deemed valid and timely, if commenced after the issuance of the election certificate or after twenty days after the result of said election having been declared by such election board; and provided further, that this Article shall not apply to any primary election. [TCR 86-109]

2-1602 Grounds for action. Such action may be brought in the appellate Court by its leave or in the Tribal Court, in the following cases:

1. When any person shall usurp, intrude into, or unlawfully hold or exercise any public office, or shall claim any franchise within the Tribal jurisdiction or any office in any corporation created by authority of this Tribe;
2. Whenever any public officer shall have done or suffered any act which, by the provisions of law, shall work a forfeiture of his/her office;
3. When any association or number of persons shall act within the Tribal jurisdiction as a corporation without being legally incorporated or domesticated;
4. When any corporation does or admits acts which amount to a surrender or a forfeiture of its rights and privileges as a corporation, or when any corporation abuses its power or intentionally exercises powers not conferred by law;
5. For any other cause for which a remedy might have been heretofore obtained by writ of quo warranto, or information in the nature of quo warranto. [TCR 86-109, 94-07]

2-1603 Persons who may bring action. When the action is brought by the Tribal attorney general when directed to do so by competent authority, it shall be prosecuted in the name of the Tribe, but where the action brought by a person claiming an interest in the office, franchise or corporation, or claiming any interest adverse to the franchise, gift or grant, which is the subject of the action, it shall be prosecuted in the same and under the direction, and the expense of such persons. Whenever the action is brought against a person for usurping an office by the Tribal attorney general, he/she shall set forth in the petition the name of person rightfully entitled to the office and his/her right or title thereto; when the action in such case is brought by the person claiming title, he/she may claim and recover any damage he/she may have sustained. [TCR 86-109]

2-1604 Judgment is contest of office. In every case contesting the right to an office, judgment shall be rendered according to the rights of the parties, and for the damages the plaintiff or person entitled may have sustained, if any, to the time of the judgment. [TCR 86-109]

2-1605 Judgment for plaintiff. If judgment be rendered in favor of the plaintiff or person entitled, he/she shall proceed to exercise the functions of the office, after he/she has been qualified as required by law; and the Court shall order the defendant to deliver over all the books and papers in his/her custody or within his/her power, belonging to the office from which he/she shall have been ousted. [TCR 86-109]

2-1606 Enforcement of judgment. If the defendant shall refuse or neglect to deliver over the books and papers, pursuant to the order, the Court, or judge thereof shall enforce the order by attachment or imprisonment, or both. [TCR 86-109]

2-1607 Separate action for damages. When judgment is rendered in favor of the plaintiff, he/she may, if he/she has not claimed his/her damages in the action, have a separate action for the damages at any time within one year after the judgment. The Court may give judgment of ouster against the defendant, and exclude him/her from the office, franchise or corporate rights; and in cases of corporations, may give judgment that the same shall be dissolved. [TCR 86-109]

2-1608 Corporation. If judgment be rendered against any corporation, or against any persons claiming to be a corporation, the Court may cause the costs to be collected by execution against the persons claiming to be a corporation, or by attachment against the directors or other officers of the corporation, and may restrain any disposition of the effects of the corporation, appoint a receiver of its property and effects, take an account, and make a distribution thereof among the creditors and person entitled. [TCR 86-109]

TITLE 2
ARTICLE 17
SMALL CLAIMS PROCEDURE

2-1701 Small claims.
2-1702 Small claims affidavit.
2-1703 Preparation of affidavit.
2-1704 Service of affidavit.
2-1705 Date for appearance.
2-1706 Transfer of actions.
2-1707 Counterclaim or setoff.
2-1708 Actions for amounts exceeding excess of two thousand dollars.
2-1709 Attachment or garnishment, other matters.
2-1710 Trial by Court.
2-1711 Payment of judgment.
2-1712 Appeals.
2-1713 Fees.
2-1714 Costs.
2-1715 Judgments rendered under small claims procedure.
2-1716 Fee for docketing judgment.
2-1717 Other action in small claims Court.

2-1701 Small claims. The following suits may be brought under the small claims procedures:

1. Actions for the recovery of money based on contract or tort, including subrogation claims, but excluding libel or slander, where the amount sought to be recovered, exclusive of attorney's fees and other Court costs, does not exceed two thousand dollars ($2,000.00). Libel or slander actions may not be brought in the small claims Court.
2. Actions to replevy personal property where the value of personal property sought to be replevied does not exceed two thousand dollars ($2,000.00); where the claims for possession of personal property and to recover money are pleaded in the alternative, the joinder of claims is permissible if neither the value of the property nor the total amount of money sought to be recovered, exclusive of attorney's fees and other costs, does not exceed two thousand dollars ($2,000.00).

No action may brought under small claims procedure by any collection agency, collection agent or any assignee of a claim. In those cases which are uncontested the amount of attorney's fees allowed shall not exceed ten percent of the judgment. [TCR 86-109]

2-1702 Small claims affidavit. Action under the small claims procedure shall be initiated by plaintiff or his/her attorney filing an affidavit in substantially the following form with the clerk of the Court:

IN THE TRIBAL COURT
[NAME OF TRIBE]
SMALL CLAIMS DIVISION

_____)
Plaintiff)
vs.) Small Claims No. _____
)
_____)
Defendant)

[NAME OF TRIBE])
) ss.
[NAME OF RESERVATION])

_____, being fully sworn, deposes and says:

That the defendant resides, _____ (within) (without) the Tribal jurisdiction, and that the mailing address of the defendant is _____.

That the defendant is indebted to the plaintiff in the sum of $_____ for _____ which arose (within) (without) the Tribal jurisdiction, that plaintiff demanded payment of said sum, but the defendant refused to pay the same and no part of the amount sued has been paid.

and/or

That the defendant is wrongfully in possession of certain personal property described as _____ that the value of said personal property is $_____. That plaintiff is entitled to possession thereof and has demanded that defendant relinquish possession of said personal property, but that defendant wholly refused to do

_____
Plaintiff

Subscribed and sworn to before me this ___ day of _____, 20__.

_____
Notary Public (or Clerk or Judge)

My commission Expires: _____

On the affidavit shall be printed:

ORDER

The People of [Name of Tribe], to the within-named defendant:

You are hereby directed to appear and answer the foregoing claim and to have with you all books, papers and witnesses needed by you to establish your defense to said claim.

This matter shall be heard at [name and address of Courthouse building], in [complete address of Courthouse], at the hour of _____ o'clock of the ___ day of _____, 20__, or at the same time and place seven (7) days after service hereof, whichever is the latter. And you are further notified that in case you do not so appear, judgment will be given against you as follows:

For the amount of said claim as it is stated in said affidavit, for possession of the personal property described in said affidavit, and, in addition, for costs of the action (including attorney fees where provided by law), including costs of service of this order.

Dated this ___ day of _____, 20__.

_____
Clerk of the Court (or Judge)

[TCR 86-109]

2-1703 Preparation of affidavit. The claimant shall prepare such an affidavit as is set forth in Section 2-1702 of this Article or, at his/her request, the clerk of said Court shall draft the same for him/her. Such affidavit may be presented by the claimant in person or sent to the clerk by mail. Upon receipt of said affidavit, properly sworn to, the clerk shall file the same and make a true and correct copy thereof, and the clerk shall fill in the blanks in the order printed on said copy and sign the order. [TCR 86-109]

2-1704 Service of affidavit. Unless service by the Tribal police chief or other authorized person is requested by the plaintiff, the defendant shall be served by mail. The clerk shall enclose a copy of the affidavit and the order in an envelope addressed to the defendant at the address stated in said affidavit, prepay the postage, and mail said envelope to said defendant by certified mail and request a return receipt from addressee only. The clerk shall attach to the original affidavit the receipt for the certified letter and the return card thereon or other evidence of service of said affidavit and order. If the envelope is returned undelivered and sufficient time remains for making service, the clerk shall deliver a copy of the affidavit and order to the Tribal police chief who shall serve the defendant in the time stated in Section 2-1.
[TCR 86-109, 94-07]

2-1705 Date for appearance. The date for the appearance of the defendant as provided in the order endorsed on the affidavit shall be no more than thirty days nor less than ten days from the date of said order. The order shall be served upon the defendant at least seven days prior to the date specified in said order for the appearance of the defendant. If it is not served upon the defendant, the plaintiff must apply to the clerk for a new alias order setting a new day for the appearance of the defendant, which shall not be more than thirty days nor less than ten from the date of the issuance of the new order. When the clerk has

fixed the date for appearance of the defendant, he/she shall inform the plaintiff either in person or by certified mail, of said date and order the plaintiff to appear on said date.

2-1706 Transfer of actions. On motion of the defendant the action shall be transferred from the small claims docket to the general civil docket of the Court, provided said motion is filed and notice given to opposing party at least forty eight hours prior to the time fixed in the order for defendant to appear or answer and, provided further, that the defendant deposit the cost of filing a complaint in a civil action and thereafter the action shall proceed as other civil actions and shall not proceed under the small claims procedure. The clerk shall enclose a copy of the order transferring the action from the small claims docket to the general docket in an envelope addressed to the plaintiff, with postage prepaid. Within twenty days of the date the transfer order is signed, plaintiff shall file a civil complaint that conforms to the standards of civil pleadings and shall be answered and proceed to trial as in other civil actions. If the plaintiff ultimately prevails in the action so transferred by the defendant, a reasonable attorney's fee shall be allowed to plaintiff's attorney to be taxed as costs in the case. [TCR 86-109]

2-1707 Counterclaim or setoff. No formal pleading, other than the claim and notice, shall be necessary, and there is no requirement to assert any counterclaim or cross-claim, but if the defendant wishes to state a new matter which constitutes a counterclaim or a setoff, he/she shall file a verified answer, a copy of which shall be delivered to the plaintiff, his/her attorney in person, and filed with the clerk of the Court not later than forty-eight hours prior to the hour set for the appearance of said defendant in such action. Such answer shall be made in substantially the following form:

COUNTERCLAIM OR SETOFF
IN THE TRIBAL COURT
[NAME OF TRIBE]
SMALL CLAIMS DIVISION

_____)
Plaintiff)
)
vs.) Small Claims No. _____
)
_____)
Defendant)

CLAIM OF DEFENDANT)
)
[NAME OF TRIBE])
)
[NAME OF RESERVATION])

_____, being first duly sworn, deposes and says: That said plaintiff is indebted to said defendant in the sum of $_____ for _____, which amount defendant prays may be allowed as a claim against the plaintiff herein.

_____
Defendant

Subscribed and sworn to before me this ___ day of _____, 20__.

_____
Notary Public (or Clerk or Judge)

[TCR 86-109]

2-1708 Actions for amounts exceeding excess of two thousand dollars. If a claim, a counterclaim, or a setoff is filed for an amount in excess of two thousand dollars ($2,000.00), the action shall be transferred to the general civil docket of the Tribal Court unless both parties agree in writing and file said agreement with the papers in the action that said claim, counterclaim or setoff shall be tried under the small claims procedure. If such an agreement has not been filed, a judgment in excess of two thousand dollars ($2,000.00) may not be enforced for the part that exceeds two thousand dollars ($2,000.00) shall deposit with the clerk of the Court costs that are charged in other cases, less any sums that have been already paid to the clerk, or his/her claim shall be dismissed and the remaining claims, if any, shall proceed under the small claims procedure. [TCR 86-109, 94-07]

2-1709 Attachment or garnishment, other matters. No attachment or prejudgment garnishment shall issue in any suit under the small claims procedure. Proceedings to enforce or collect a judgment rendered by the trial Court in a suit under the small claims procedure shall be in all respects as in other cases. No depositions shall be taken or interrogatories or other discovery proceeding shall be used under the small claims procedure except in aid of execution. No new parties shall be brought into the action, and no party shall be allowed to intervene in action. [TCR 86-109]

2-1710 Trial by Court. Actions under the small claims procedure shall be tried to the Court. Provided, however, if either party wished a reporter, he/she must notify the clerk of the Court in writing at least forty

eight hours before the time set for the defendant's appearance and must deposit with said notice with the clerk the sum of twenty dollars ($20.00) against the costs or producing the record. The plaintiff and the defendant shall have the right to offer evidence in their behalf by witnesses appearing at such hearing, and the judge may call such witnesses and order the production of such documents as he/she may deem appropriate. The hearing and disposition of such actions shall be informal with the sole object of dispensing speedy justice between the parties. [TCR 86-109]

2-1711 Payment of judgment. If judgment be rendered against either party for the payment of money, said party shall pay the same forthwith, provided, however, the judge may make such order as to time of payment or otherwise as may, by him/her, be deemed to be right and just. [TCR 86-109]

2-1712 Appeals. Appeals may be taken from the judgment rendered under small claims procedure to the appellate Court of the Tribe in the same manner as appeals are taken in other civil actions, provided that any party which did not request a reporter as provided in Section 2-1710 shall not be granted a new trial or other relief on appeal due to lack of a record. [TCR 86-109, 94-07]

2-1713 Fees. A fee shall be charged and collected for the filing of the affidavit for the commencement of any action, for the filing of any counterclaim or setoff, for the mailing of the copy of the affidavit as determined by rules of the Court, and, if the affidavit and order are served by the Tribal police, the clerk shall collect the usual police service fee, which shall be taxed as costs in the case. After judgment, the clerk shall issue such process and shall be entitled to collect such fees and charges as are allowed by law for the like services in other actions. All fees collected hereunder shall be deposited with other fees that are collected by the Tribal Court. Provided that any statute providing for an award of attorney's fees shall be applicable to the small claims division if the attorney makes an appearance in the case, whether before or after judgment or on hearing for disclosure of assets. [TCR 86-109, 94-07]

2-1714 Costs. The prevailing party in an action is entitled to costs of the action, including the costs of service of the order for the appearance of the defendant and the costs of enforcing any judgment rendered therein. [TCR 86-109]

2-1715 Judgments rendered under small claims procedure.

1. Except as otherwise provided herein, judgments rendered under the small claims procedure shall not be entered upon the judgment docket. Such judgment shall not become a lien upon real property unless entered upon the judgment docket as hereinafter provided.
2. Any small claims judgment, when satisfied by payment other than through the office of the Court clerk or otherwise discharged, may be released by the Court upon written application to the Court by the judgment debtor and upon proof of due notice thereof having been mailed by the Court clerk to the judgment creditor at his last-known address at least ten days prior to the hearing of the application. Payment of all costs necessary to accomplish said release shall be paid by the judgment debtor.
3. Such judgment shall become a lien on any non-trust interest real property of the judgment debtor within the Tribal jurisdiction only from and after the time a certified copy of the judgment has been filed in the office of the Court clerk for entry in the clerk's land tract records book. No judgment under the Small Claims Procedure Act shall be a lien on the real property of a judgment debtor until it has been filed in this manner. When a judgment is entered upon the judgment docket, the Court clerk shall instruct the prevailing party of the manner in which to proceed to file such judgment for the purpose of obtaining a lien against the real property of the judgment debtor and

the Court clerk shall provide the proper certified copy of the judgment necessary to file. [TCR 86-109]

2-1716 Fee for docketing judgment. The Court clerk shall, upon payment by the prevailing party of a fee established by Court rule, cause the judgment to be entered upon the judgment docket. Fees collected pursuant to this Section shall become part of the cost of the action. [TCR 86-109]

2-1717 Other action in small claims Court. By leave of the Court, and with the consent of all parties, other actions not provided for herein, or exceeding the maximum amount allowed to be claimed by Sections 2-1710 and 2-1708, except action for liable and slander may be tried under the small claims procedure. The motion for leave to file in such cases shall contain the consent of the defendant endorsed thereon, or such consent shall be promptly filed upon the submittal for filing of the small claims affidavit.
[TCR 86-109]

TITLE 3
CRIMINAL CODE
(As redesignated June 1, 1989)

SUMMARY OF CONTENTS

SECTION	ARTICLE-PAGE
1. TABLE OF REVISIONS	ii
2. TABLE OF CONTENTS	iii
3. ARTICLE 1: GENERAL PROVISIONS	1-1
4. ARTICLE 2: PRINCIPLES OF CRIMINAL RESPONSIBILITY	2-1
5. ARTICLE 3: CRIMES AGAINST PROPERTY	3-1
6. ARTICLE 4: CRIMES AGAINST THE PERSON	4-1
7. ARTICLE 5: INCHOATE CRIMES	5-1
8. ARTICLE 6: CRIMES AGAINST PUBLIC JUSTICE	6-1
9. ARTICLE 7: CRIMES AGAINST PUBLIC HEALTH, SAFETY AND WELFARE	7-1
10. ARTICLE 8: CONTROLLED SUBSTANCES ACT	8-1
11. ARTICLE 9: RESERVED	9-1
12. ARTICLE 10: RESERVED	10-1
13. ARTICLE 11: RESERVED	11-1
14. ARTICLE 12: ADULT AND ELDERLY PROTECTIVE SERVICES ACT	12-1
15. ARTICLE 13: [REPEALED]	13-1
16. ARTICLE 14: WINNEBAGO TRIBAL POLICE FORCE	14-1
17. ARTICLE 15: CRIMINAL TRAFFIC OFFENSES	15-1

TITLE 3
TABLE OF REVISIONS

The following table is included in this title as a guide for determining whether each article properly reflects the current version. This table will be updated with the revision of each article.

Through usage and supplementation, pages in bound titles can be inserted and removed when sections are revised on an article-by-article basis. This table should be placed before the Table of Contents in the title.

The "Article" column lists each article, and the "Section" column lists any corresponding sections that have been revised, in sequence. The "Revised Date" column reflects the effective date of the revision (e.g., "6/20/15"). If an article is not listed in the table, it has not been revised since the December 2015 Winnebago Tribal Code update and distribution.

Article	**Section**	**Revised Date**

TITLE 3
CRIMINAL CODE
(As redesignated June 1, 1989)

ARTICLE 1
GENERAL PROVISIONS

3-101 Name and citation.
3-102 Effective date.
3-103 Purpose and construction.
3-104 No affect on civil liability.
3-105 Exclusiveness of offenses.
3-106 Severability.
3-107 Terms, defined.
3-108 Prosecution for multiple offenses.
3-109 Limitation.
3-110 Separate trials.
3-111 Lesser included offenses.
3-112 Double jeopardy.
3-113 Burden and presumption of innocence.
3-114 Negating defenses.
3-115 Presumptions of fact.

TITLE 3
ARTICLE 2
PRINCIPLES OF CRIMINAL RESPONSIBILITY

3-201 Acts and omissions to act.
3-202 Culpability; general requirements.
3-203 Causal relationship between conduct and result.
3-204 Ignorance or mistake of fact.
3-205 Liability for conduct of another.
3-206 Corporation and unincorporated associations.
3-207 Intoxication.
3-208 Duress.
3-209 Consent.
3-210 Entrapment.
3-211 Mental disease or defect.
3-212 Justification; terms defined.
3-213 Justification; choice of evils.
3-214 Public duty; execution.
3-215 Use of force; self-protection.
3-216 Use of force; protection of others persons.
3-217 Use of force; protection of property.
3-218 Use of force; law enforcement.
3-219 Use of force by person with special responsibility for care, discipline or safety of others.
3-220 Mistake of law; reckless or negligent use of force.
3-221 Justification in property crimes.
3-222 Justification an affirmative defense; civil remedies unaffected.

TITLE 3
ARTICLE 3
CRIMES AGAINST PROPERTY

3-301 Building defined.
3-302 Arson, first degree; penalty.
3-303 Arson, second degree; penalty.
3-304 Arson, third degree; penalty.
3-305 Burning to defraud insurer; penalty.
3-306 Burglary; penalty.
3-307 Possession of burglary tools; penalty.
3-308 Breaking and entering; penalty.
3-309 Theft; terms defined.
3-310 Consolidation of theft offenses.
3-311 Theft by unlawful taking or disposition.
3-312 Theft by shoplifting; penalty.
3-313 Theft by deception.
3-314 Theft by extortion.
3-315 Theft of property lost, mislaid, delivered by mistake; penalty.
3-316 Theft of services; penalty.
3-317 Unauthorized use of a propelled vehicle; affirmative defense; penalty.
3-318 Theft by receiving stolen property.
3-319 Grading of theft offenses.
3-320 Criminal mischief; penalty.
3-321 Criminal trespass; penalty.
3-322 Repealed.
3-323 Criminal trespass, affirmative defenses.
3-324 Littering of public and private property; penalty.
3-325 Forgery; terms defined.
3-326 Forgery, first degree; penalty.
3-327 Forgery, second degree; forgery penalties.
3-328 Criminal possession of a forged instrument; penalty.
3-329 Criminal possession of forgery devices; penalty.
3-330 Criminal simulation; penalty.
3-331 Criminal impersonation; penalty.
3-332 Issuing a bad check; penalty.
3-333 False statement or book entry; destruction or secretion of records; penalty; organization defined.
3-334 Commercial bribery and breach of duty to act disinterestedly; penalty.
3-335 Fraudulent use of credit card; penalty.
3-336 Deceptive business practices; penalty.
3-337 Defrauding creditors; penalty.
3-338 Securing execution of documents by deception; penalty.
3-339 Criminal usury; penalty.
3-340 Unlawful dealing with property by a fiduciary; penalty.
3-341 Making a false credit report; penalty.
3-342 Computers; terms defined.
3-343 Depriving or obtaining property or services; penalty.
3-344 Unlawful acts; harming or disrupting operations; penalties.
3-345 Unlawful acts; obtaining confidential public information; penalties.
3-346 Unlawful acts; access without authorization; exceeding authorization; penalties.

TITLE 3
ARTICLE 4
CRIMES AGAINST THE PERSON

3-401 Compounding a criminal offense, defined; penalty.
3-402 Homicide; terms defined.
3-403 Murder in the first degree; penalty.
3-404 Murder in the second degree; penalty.
3-405 Manslaughter; penalty.
3-406 Motor vehicle homicide; penalty.
3-407 Assisting suicide, defined; penalty.
3-408 Assault in the first degree; penalty.
3-409 Assault in the second degree; penalty.
3-409.5 Simple assault; penalty.
3-410 Terroristic threats; penalty.
3-411 Restrain, abduct; defined.
3-412 Kidnapping; penalty.
3-413 False imprisonment in the first degree; penalty.
3-414 False imprisonment in the second degree; penalty.
3-415 Violation of custody; penalties.
3-416 Sexual assault; legislative intent.
3-417 Sexual assault; terms defined.
3-418 Sexual assault; first degree; penalty.
3-419 Sexual assault; second degree; penalty.
3-420 Sexual assault; in camera hearing.
3-421 Sexual assault; evidence of past sexual behavior; when admissible; procedure.
3-422 Sexual assault; evidence against another person; when admissible.
3-423 Confined person; offenses against another person; penalty; sentence.
3-424 Robbery; penalty.

TITLE 3
ARTICLE 5
INCHOATE CRIMES

3-501 Criminal attempt; conduct; penalty.
3-502 Conspiracy, defined; penalty.
3-503 Conspiracy; renunciation of criminal intent.
3-504 Accessory to crime; defined; penalty.
3-505 Aiding consummation of crime; penalty.
3-506 Prosecuting for aiding and abetting.

TITLE 3
ARTICLE 6
CRIMES AGAINST PUBLIC JUSTICE

3-601 Obstructing government operations; penalty.
3-602 Failure to report injury of violence; physician or surgeon; emergency room or first aid station attendants; penalty.
3-603 Refusing to aid a peace officer; penalty.
3-604 Resisting arrest; penalty; affirmative defense.
3-605 Consumption of liquor on public property, public roads, streets, alleys, forbidden; penalty.
3-606 Obstructing a peace officer; penalty.
3-607 False reporting; penalty.
3-608 Interfering with a fireman on official duty; penalty; fireman, defined.
3-609 Abuse of public record; penalty; public record, defined.
3-610 Escape; official detention, defined; knowingly permitting escape; penalty; defense to prosecution.
3-611 Providing contraband; penalty.
3-612 Loitering about jail; penalty.
3-613 Assault on an officer in the first degree; penalty.
3-614 Assault on an officer in the second degree; penalty.
3-615 Repealed.
3-616 Perjury; subornation of perjury; penalty.
3-617 Juror, testimony and official proceedings; defined.
3-618 Bribery; penalty.
3-619 Bribery of a witness; penalty; witness receiving bribe; penalty.
3-620 Bribery of a juror; penalty; juror receiving bribe; penalty.
3-621 Tampering with witnesses, informants, or jurors; penalty.
3-622 Jury tampering; penalty.
3-623 Tampering with physical evidence; penalty; physical evidence, defined.
3-624 Simulating legal process; penalty.
3-625 Employee; penalized due to jury service; prohibited; penalty.
3-626 Impersonating a peace officer.
3-627 Impersonating a public servant.
3-628 Official misconduct; penalty.
3-629 Oppression under color of office; penalty.
3-630 Misusing public money.
3-631 Improper influence in official matters.
3-632 Retaliation for past official action.
3-633 Improper gifts to public servants.
3-634 Special influence.
3-635 Doing business without a license.
3-636 Tampering with public property.
3-637 Injuring public property.
3-638 Bail jumping.
3-639 Failure to obey a lawful order of the Court.
3-640 Repealed.
3-641 Neglecting to serve a warrant; penalty; forfeiture of office.
3-642 Mutilating a flag; penalty; flag, defined.
3-643 Illegal solicitation.
3-644 Repealed.
3-645 Failure to appear; penalty.
3-646 Sell or exchange of property for promise to vote prohibited.

TITLE 3
ARTICLE 7
CRIMES AGAINST PUBLIC HEALTH, SAFETY AND WELFARE
(As revised May 21, 2014)

3-701 Bigamy; penalty; exception.
3-702 Incestuous marriages; declared void.
3-703 Incest; penalty.
3-704 Child abuse; penalty.
3-705 [REPEALED]
3-706 [REPEALED]
3-706.1 [REPEALED]
3-707 [REPEALED]
3-708 [REPEALED]
3-708 Violations; penalty.
3-709 Privileged communication; patient and physician; husband and wife; not ground for excluding evidence.
3-710 Abandonment of spouse, child or dependent stepchild; child, defined.
3-711 Criminal nonsupport; penalty; exception.
3-712 Protective custody; penalty.
3-713 Failure to send child to school; truancy; penalties.
3-714 Curfew; penalty.
3-715 Contributing to the delinquency of a child; definitions; procuring alcohol for a minor; penalty.
3-716 Minor in possession; penalty.
3-717 Tobacco; minor in possession; sale to minors; smoking in tribal building prohibited; penalties; exemption.
3-718 Trafficking in children; penalty.
3-719 Welfare offense; penalty.
3-720 Desecration; penalty.
3-721 Disrupting a public or religious assembly.
3-722 Violation of privacy; penalty.
3-723 Criminal defamation; penalty.
3-724 Harassment; penalty.
3-725 Disorderly conduct; penalty.
3-726 Prostitution; penalty; citation in lieu of arrest.
3-727 Pandering; penalty.
3-728 Pandering; evidence.
3-729 Keeping a place of prostitution; penalty.
3-730 Prostitution cases; incrimination testimony; how treated.
3-731 Debauching a minor; penalty.
3-732 Public indecency; penalty.
3-733 Obscenity; penalty.
3-734 Rioting; penalty.
3-735 Failure to disperse; penalty.
3-736 Deadly weapon, knife, firearms, other terms; defined.
3-737 Weapons offense; penalty.
3-738 Aggravated weapons offense; penalty.
3-739 Using firearms to commit a crime; penalty.
3-740 Dangerous devices; penalty.
3-741 Fireworks offense; penalty.
3-742 Inhaling or drinking certain compounds; penalty.
3-743 Selling and offering for sale certain compounds; use; knowledge of seller; unlawful.
3-744 Act, exceptions.
3-745 [Reserved.]
3-746 Abandoning, or concealing a dead human body; penalty.
3-747 Concealing the death of another person; penalty.
3-748 Intimidation by phone call; penalty; prima facie evidence.
3-749 Interfering with a public service company; penalty.
3-750 Maintaining a nuisance; penalty; abatement or removal.
3-751 Disturbing the peace; penalty.
3-752 Telecommunications violations; penalty.
3-753 Animal, cruel mistreatment, cruel neglect, and abandon; defined.
3-754 Cruelty to animals; penalty; authorized or permitted conduct.
3-755 Livestock offense; penalty.
3-756 Waters offense; penalty.
3-757 Assault of a Human Embryo or Fetus; terms defined; limitations.
3-758 Assault of a Human Embryo or Fetus in the first degree; penalty.

TITLE 3
ARTICLE 7
CRIMES AGAINST PUBLIC HEALTH, SAFETY AND WELFARE
(continued)

3-759 Assault of a Human Embryo or Fetus in the second degree; penalty
3-760 Assault of a Human Embryo or Fetus in the third degree; penalty.
3-761 Indecent liberties; penalty.
3-762 Video Recording and Distribution of Criminal Assaults

TITLE 3
ARTICLE 8
CONTROLLED SUBSTANCES ACT
(As revised October 16, 2013)

3-801 Definitions.
3-802 Prohibition of sales, transport, import, export or possession of drug paraphernalia or drug manufacturing equipment.
3-803 Narcotics revolving fund.
3-804 Future controlled substances included.
3-805 Nomenclature in schedules.
3-806 Schedule I characteristics.
3-807 Schedule II characteristics.
3-808 Schedule III characteristics.
3-809 Schedule IV characteristics.
3-810 Schedule V characteristics.
3-811 Schedule I.
3-812 Schedule II.
3-813 Schedule III.
3-814 Schedule IV.
3-815 Schedule V.
3-816 Seizure without warrant; forfeitures; disposition; evidence; court costs and expenses.
3-817 School property; distribution; dispensing or possession.
3-818 Prohibited acts; penalties.
3-819 Prohibited acts; fraud, deceit.
3-820 Certain substances causing intoxication; exemptions; penalties.
3-821 Endeavor and conspiracy.
3-822 General penalty clause.
3-823 Additional penalties.
3-824 Severability.
3-825 Possession of a dangerous drug; penalty
3-826 Dangerous drug offense; penalty

TITLE 3
ARTICLE 9

[Reserved]

TITLE 3
ARTICLE 10

[Reserved]

TITLE 3
ARTICLE 11

[Reserved]

TITLE 3
ARTICLE 12
ADULT AND ELDERLY PROTECTIVE SERVICES ACT

3-1200 Citation.
3-1201 Legislative intent.
3-1202 Definitions.
3-1203 Duty of healthcare providers to report abuse.
3-1204 Duty of law enforcement to investigate.
3-1205 Immunity from liability.
3-1206 No access to records.
3-1207 Evidence exclusions void.
3-1208 No abuse solely for reliance upon spiritual healing.
3-1209 Willful failure to report.
3-1210 Willful release of confidential information.
3-1211 Abuse of a vulnerable or elderly adult.
3-1212 Ex parte order authorized.
3-1213 Subpoena of Medical and Financial Records.
3-1214 Procedures for prosecution.
3-1215 Conditions of Release.
3-1216 Elder Protection Order and Time Limits.
3-1217 Violation of Protection Orders.
3-1218 Severability.

TITLE 3
ARTICLE 13
[REPEALED]

TITLE 3
ARTICLE 14
WINNEBAGO TRIBAL POLICE FORCE

3-1400 Establishment of a force of police officers.
3-1401 Definitions.
3-1402 Standards.
3-1403 Training standards.
3-1404 Training.
3-1405 No exemptions.
3-1406 Status of Tribal peace officers.
3-1407 Weapons.
3-1408 Supplementary capacity.
3-1409 Supervision of Tribal peace officers.

TITLE 3
ARTICLE 15
CRIMINAL TRAFFIC OFFENSES
(As adopted September 24, 2003)

3-1500 Driving under influence of alcoholic liquor or drug; penalties; revocation of operator's license; applicable to violation of statutes or ordinances; probation; alcohol assessment; court; powers.
3-1501 Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; when test administered; refusal; penalty.
3-1502 Driving under influence of alcoholic liquor or drugs; test; additional test; refusal to permit; effect; results of test; available upon request.
3-1503 Driving under influence of alcoholic liquor or drugs; chemical test; consent of person incapable of refusal not withdrawn.
3-1504 Driving under influence of alcoholic liquor or drugs; chemical test; violation of statute or ordinance; results; competent evidence; permit; fee.
3-1505 Driving under influence of alcohol; operator's license; confiscation and revocation; procedures; appeal.
3-1506 Driving under influence of alcohol; revocation of impounded operator's license; procedure; reinstatement; fee; eligibility for employment driving permit and ignition interlock device.
3-1507 Operator's license revocation decision; notice; contents.
3-1508 License revocation; appeal.
3-1509 Blood sample; results of chemical test; admissible in criminal prosecution; disclosure required.
3-1510 Person under twenty-one years of age; prohibited acts; enforcement.
3-1511 Implied consent to submit to chemical test; when test administered; refusal; penalty.
3-1512 Impounded operator's license; sealing of record; when; operation of motor vehicle authorized.
3-1513 Ignition interlock device; court order authorized; issuance of restricted Class O license; prohibited act; violation; penalty.
3-1514 Careless driving, defined; penalty.
3-1515 Reckless driving, defined; penalty.
3-1516 Willful reckless driving, defined.
3-1517 Willful reckless driving; first offense; penalty.
3-1518 Reckless driving or willful reckless driving; second offense; penalty.
3-1519 Reckless driving or willful reckless driving; third and subsequent offenses; penalty.

TITLE 3
CRIMINAL CODE
(As redesignated June 1, 1989)

ARTICLE 1
GENERAL PROVISIONS

3-101 Name and citation.
3-102 Effective date.
3-103 Purpose and construction.
3-104 No affect on civil liability.
3-105 Exclusiveness of offenses.
3-106 Severability.
3-107 Terms, defined.
3-108 Prosecution for multiple offenses.
3-109 Limitation.
3-110 Separate trials.
3-111 Lesser included offenses.
3-112 Double jeopardy.
3-113 Burden and presumption of innocence.
3-114 Negating defenses.
3-115 Presumptions of fact.

3-101 Name and citation. This Title shall be known and may be cited as the Criminal Code, and references in this part shall refer to this Code unless another is clearly indicated. [TCR 86-79]

3-102 Effective date. This Code shall apply to all offenses as herein defined occurring on or after its effective date. If all or any part of any offense was committed prior to such date, the offense shall be governed by the prior existing law, except that defenses enumerated herein shall apply to all offenses tried after the effective date. [TCR 86-79]

3-103 Purpose and construction. The provisions of this Code shall be construed in accordance with these general principles and purposes:

1. To forbid and prevent conduct that unjustifiably and inexcusably inflicts or threatens substantial harm to individual or public interests;
2. To subject to public control persons whose conduct indicates that they are disposed to commit crimes;
3. To safeguard conduct that is without fault and which is essentially victimless in its effect from condemnation as criminal;
4. To give fair warning of the nature of the conduct declared to constitute an offense;
5. To differentiate on reasonable grounds between serious and minor offenses,
6. To prevent arbitrary and oppressive treatment of persons accused or convicted of offenses and to promote the correction and rehabilitation of such persons; and
7. To encourage in each case the least restrictive means which enables rehabilitation of the defendant. [TCR 86-79, 89-87]

3-104 No affect on civil liability. This Code shall not bar, suspend or otherwise affect any right or liability to damages, penalty, forfeiture or other remedy authorized by law to be recovered or enforced in a civil action. [TCR 86-79]

3-105 Exclusiveness of offenses. No conduct constitutes an offense unless so declared by this Code, or by any other Tribal resolution or ordinance or Code provision or by federal law. [TCR 86-79]

3-106 Severability. If any provision of this Code or the application of any provision of this Code to any person or circumstance is held invalid, the remainder of this Code shall not be affected thereby. [TCR 86-79]

3-107 Terms, defined. As used in this Code, unless the context otherwise requires:

1. "Act" shall mean a bodily movement, and includes words and possession of property; make possible;
2. "Aid" or "assists" shall mean knowingly to give or lend money or credit to be used for, or to available, or to further activity thus aided or assisted;
3. "Benefit" shall mean any gain or advantage to the benefit person pursuant to the desire or consent of the beneficiary;
4. "Bodily injury" shall mean physical pain, illness, or any impairment of physical condition;
5. "Conduct" shall mean an action or omission and its accompanying state of mind, or where relevant, a series of acts and omissions;
6. "Deadly physical forces" shall mean force, the intended, natural, and probable consequence of which is to produce death, or which does, in fact, produce death;
7. "Deadly weapon" shall mean any firearm, knife, bludgeon, or other device, instrument, material, or substance, whether animate or inanimate, which in the manner it is used or intended to be used is capable of producing death or serious bodily injury;
8. "Deface" shall mean to alter the appearance of something by removing, distorting, adding to, or covering all or a part of the thing;
9. "Dwelling" shall mean a building or other thing which is used, intended to be used, or usually used by a person for habitation;
10. "Government" shall mean the Winnebago Tribe of Nebraska, the United States, the state, and any corporation or other entity established by law to carry out any governmental function;
11. "Governmental functions" shall mean any activity which a public servant is legally authorized to undertake on behalf of government;
12. "Motor vehicles" shall mean every self-propelled land vehicle, not operated upon rails, except self-propelled invalid chairs;
13. "Omission" shall mean a failure to perform an act as to which a duty of performance is imposed by law;
14. "Peace officers" shall mean any officer or employee of the Winnebago Tribe of Nebraska, the United States, or the state, authorized by law to make arrests;
15. "Pecuniary benefits" shall mean benefit in the form of money, property, commercial interest, or anything else, the primary significance of which is economic gain;
16. "Person" shall mean any natural person and where relevant a corporation or an unincorporated association;
17. "Public places" shall mean a place to which the public or a substantial number of the public has access, and includes but is not limited to highways, transportation facilities, schools, places of amusement, parks, playgrounds, and the common areas of public and private buildings and facilities;
18. "Public servants" shall mean any officer or employee of government, whether elected or appointed, and any person participating as an advisor, consultant, process server, or otherwise in performing a governmental function, but the term does not include witnesses;
19. "Recklessly" shall mean acting with respect to a material element of an offense when any person disregards a substantial and unjustifiable risk that the material element exists or will result from his/her conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him/her, its disregard involves a

gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation;20. "Serious bodily injury" shall mean bodily injury which involves a substantial risk of death, or which involves substantial risk of serious permanent disfigurement, or protracted loss or impairment of the function of any part or organ of the body;

21. "Tamper" shall mean to interfere with something improperly or to make unwarranted alterations in its condition;
22. "Thing of value" shall mean real property, contract rights, choices in action, services, and any rights of use or enjoyment connected therewith; and
23. "Voluntary act" shall mean an act performed as a result of effort or determination, and includes the possession of property if the actor was aware of his/her physical possession or control thereof for a sufficient period to have been able to terminate it. [TCR 86-79]

3-108 Prosecution for multiple offenses. When the same conduct of a defendant may establish the commission of more than one offense, the defendant may be prosecuted for each such offense. He/she may not, however, be convicted of more than one offense, if.

1. One offense is a lesser included offense of another offense where conviction was sought for both;
2. One offense consists only of a conspiracy, or any attempt to commit the other; or
3. Inconsistent findings of fact are required to establish the offenses; or
4. The offenses only differ in that one is defined to prohibit a specific kind of conduct and the other prohibits the same conduct generally; or
5. The offense is defined as a continuing course of conduct and the defendant's course of conduct was uninterrupted, unless the Code provides that specific periods of such conduct constitute separate offenses. [TCR 86-79]

3-109 Limitation. Except as provided in Section 3-105, a defendant shall not be subject to separate trials for multiple offenses based on the same conduct or arising from the same criminal episode, if such offenses are known to the prosecuting officer or to the state patrol, the Bureau of Indian Affairs police, or the Tribal police at the time of the commencement of the first trial and are within the jurisdiction of the Tribe. [TCR 86-79]

3-110 Separate trials. Upon application of any party and if justice so requires, the court may order that separate trials be held for two or more offenses based on the same conduct or arising from the same criminal episode. [TCR 86-79]

3-111 Lesser included offenses.

1. A defendant may be convicted of a lesser included offense different from the offense charged in a complaint without having been specifically charged with such included offense. An offense is so included when:
   A. It is established by proof of the same or less than all the facts required to establish the commission of the offense charged; or
   B. It consists of an attempt to commit the offense charged or to commit an offense otherwise included therein; or
   C. It differs from the offenses charged only in the respect that a less serious injury or risk of injury to the same person, property or public interest or a lesser kind of culpability suffices to establish its commission.

2. The court must charge the jury with respect to a lesser included offense if so requested by the defendant if there is a rational basis for a verdict acquitting the defendant of the offense charged and convicting him/her of the lesser included offense. [TCR 86-79]

3-112 Double jeopardy.

1. If a defendant has been prosecuted for one or more offenses arising out of a single criminal episode or the same facts as the original prosecution, a subsequent prosecution for the same or a different offense arising out of such episode or facts is barred if:
   A. The subsequent prosecution is for an offense that was or should have been tried in the former prosecution, unless such subsequent trial has been ordered as a separate trial by the judge; and
   B. The former prosecution:
      i. Resulted in acquittal; or
      ii. Resulted in conviction; or
      iii. Was improperly terminated; or
      iv. Was terminated by a final order of judgment for the defendant that has not been reversed, set aside or vacated and that necessarily required a determination inconsistent with a fact that must be established to secure conviction in the subsequent prosecution.
2. There is an acquittal if the prosecution results in a finding of not guilty by the trier of fact or in a determination that there was insufficient evidence to warrant conviction. A finding of guilty of the lesser included offense is an acquittal of the greater offense even though the conviction for the lesser included offense is subsequently reversed, set aside, or vacated.
3. There is a conviction if the prosecution resulted in a judgment of guilty that has not been reversed, set aside, or vacated; a verdict that has not been reversed, set aside, or vacated and that is capable of supporting a judgment; or a plea of guilty accepted by the court.
4. There is an improper termination of prosecution if the termination takes place before the verdict, if for reasons not amounting to an acquittal, and takes place after a jury has been impaneled and sworn in, or, if the matter was to be tried without a jury, after the first witness is sworn. However, termination of prosecution is not improper if:
   A. The defendant consents to the termination; or
   B The defendant waives his/her right to object to the termination; or
   C. The court finds and states for the record that the termination is necessary because:
      i. It is physically impossible to proceed with the trial in conformity to the law; or there is a legal defect in the proceeding not attributable to the prosecution that would make any judgment entered upon a verdict reversible as a matter of law; or
      ii. Prejudicial conduct in or out of the courtroom not attributable to the prosecution makes it impossible to proceed with the trial without injustice to the defendant or to the prosecution; or
      iii. The jury is unable to agree on the verdict; or
   D. A false statement of a juror on voir dire prevents a fair trial.
5. A subsequent prosecution of an offense is not barred if the former prosecution resulted in a judgment of a guilt held invalid in a subsequent proceeding on appeal, or on writ of habeas corpus.
6. Prosecution for an offense under this Code is not barred by virtue of the fact that the defendant could be or has been charged or convicted under 18 U.S.C.A., section 1153 (Major Crimes Act) or other federal law. [TCR 86-79]

3-113 Burden and presumption of innocence.

1. A defendant in a criminal proceeding is presumed to be innocent until each and every element of the offense against him/her if proved beyond a reasonable doubt. In the absence of such proof the defendant shall be acquitted.
2. By "element of the offense" is meant:
   A. The conduct, attendant circumstances or results of conduct included in the definition of the offense; plus
   B. The culpable mental state required (if any); but
   C. Jurisdiction is not an element of the offense nor is the statute of limitations or any other matter similarly unconnected with the harm or evil incident or conduct, sought to be prevented by the statute; these matters are established by a preponderance of the evidence. The existence of justification or excuse as defenses to the offense may also be established by a preponderance of the evidence. [TCR 86-79]

3-114 Negating defenses. The prosecution need not negate any defense either in the complaint or by proof unless the defense is in issue as a result of evidence presented at trial by either side, or unless the defense is an affirmative defense, and the defendant has presented evidence of such. [TCR 86-79]

3-115 Presumptions of fact. An evidentiary presumption established by this Code has the following consequences:

1. When the evidence of facts which support the presumption exist, the issue of the existence of the presumed fact must be submitted to the jury unless the court is satisfied that the evidence as a whole clearly negates the presumed fact.
2. In submitting the issue of the presumed fact to the jury, the court shall charge the jury that the presumed fact must on all evidence be proved beyond a reasonable doubt. And, that the law regards the facts that give rise to the presumed fact as evidence which, in effect, established the presumed fact at least by a preponderance of the evidence, but does not necessarily establish such fact beyond a reasonable doubt. [TCR 86-79]

TITLE 3
ARTICLE 2
PRINCIPLES OF CRIMINAL RESPONSIBILITY

3-201 Acts and omissions to act.
3-202 Culpability; general requirements.
3-203 Causal relationship between conduct and result.
3-204 Ignorance or mistake of fact.
3-205 Liability for conduct of another.
3-206 Corporation and unincorporated associations.
3-207 Intoxication.
3-208 Duress.
3-209 Consent.
3-210 Entrapment.
3-211 Mental disease or defect.
3-212 Justification; terms defined.
3-213 Justification; choice of evils.
3-214 Public duty; execution.
3-215 Use of force; self-protection.
3-216 Use of force; protection of other persons.
3-217 Use of force; protection of property.
3-218 Use of force; law enforcement.
3-219 Use of force by person with special responsibility for care, discipline or safety of others.
3-220 Mistake of law; reckless or negligent use of force.
3-221 Justification in property crimes.
3-222 Justification an affirmative defense; civil remedies unaffected.

3-201 Acts and omissions to act.

1. A person is not guilty of an offense unless his/her liability is based on conduct which includes a voluntary act or the omission to perform an act of which he/she is physically capable.
2. The following are not voluntary acts within the meaning of this Section:
   A. A reflex or convulsion;
   B. A bodily movement during unconsciousness or sleep;
   C. Conduct during hypnosis;
   D. A bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.
3. Liability for the commission of an offense may not be based on an omission unaccompanied by action unless:
   A. The omission is expressly made sufficient by the law defining the offense; or
   B. A duty to perform the omitted act is otherwise imposed by law.
4. Possession is an act, within the meaning of this Section, if the possessor knowingly procured or received the thing possessed or was aware of his/her control thereof for a sufficient period to have been able to determine hi/her possession. [TCR 86-79]

3-202 Culpability; general requirements. A person is not guilty of an offense unless he acted purposely, knowingly, or negligently, as the law may require, with respect to each element of the offense, or unless his/her acts constitute an offense involving strict liability.

1. Kinds of culpability defined are:
   A. Purposely: a person acts purposely with respect to a element of an offense:
      i. If the element involves the nature of his/her conduct or a result thereof, it is his/her conscious object to engage in conduct of that nature or to cause such a result; and
      ii. If the element involves the attendant circumstances, he/she is aware of the existence of such circumstances, or he/she believes or hopes that they exist.

B. Knowingly: a person acts knowingly with respect to an element of an offense when:
   i. If the element involves the nature of his/her conduct or the attendant circumstances, he/she is aware that his/her conduct is of that nature or that such circumstances exist; and
   ii. If the element involves a result of conduct, he/she is aware that it is practically certain that his/her conduct will cause such a result.

C. Recklessly: a person acts recklessly with respect to an element of an offense when he/she consciously disregards a substantial and unjustifiable risk that the element exists or will result from his/her conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him/her, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation.

D. Negligently: A person acts negligently with respect to an element of an offense when he/she should be aware of a substantial and unjustifiable risk that the element exists or will result from his/her conduct. The risk must be of such a nature and degree that the actor's failure to perceive it, considering the nature and purpose of his/her conduct and the circumstances known, reflects a want of that degree of care that a reasonable person would observe in the actor's situation.

E. Strict Liability: an element of an offense shall involve strict liability only when the definition of the offense or element clearly indicates a legislative purpose to impose strict liability for an element of the offense by use of the phrase strict liability or other terms of similar import, and when so used, no proof of a culpable mental state is required to establish the commission of the element or offense.

2. When the culpability sufficient to establish an element of an offense is not specifically prescribed, such element is established if a person acts purposely, knowingly, or recklessly with respect thereto.

3. When the law defining an offense prescribes the kind of culpability that is sufficient for the commission of an offense, without distinguishing among the elements thereof, such provisions shall apply to all the material elements of the offense, unless a contrary purpose plainly appears.

4. When the law provides that negligence suffices to establish an element of an offense, such element also is established if a person acts purposely, knowingly, or recklessly. When recklessness suffices to establish an element, such element is also established if a person acts purposely or knowingly. When acting knowingly suffices to establish an element, such element is also established if a person acts purposely.

5. When a particular purpose is an element of an offense, the element is established although such purpose is conditional, unless the condition negates the harm or evil sought to be prevented by the offense.

6. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is or should be aware of a high probability of its existence, unless he/she actually believes that it does not exist.

7. A requirement that an offense be committed willfully is satisfied if a person acts knowingly with respect to the material elements of the offense, unless a purpose to impose further requirements appears.

8. The knowledge that certain conduct constitutes an offense is not an element of the offense unless the definition so provides. The lack of understanding of the meaning or application of the law is not a defense to an offense unless so specified.

9. When the grade or degree of an offense depends on whether the offense is committed purposely, knowingly, recklessly, or negligently, its grade or degree shall be the lowest for which the

determinative kind of culpability is established with respect to any element of the offense. [TCR 86-79]

3-203 Causal relationship between conduct and result.

1. Conduct is the cause of a result when:
   A. It is an antecedent but for which the result in question would not have occurred; and
   B. The relationship between the cause and result satisfied any additional causal requirements imposed by this Code or the definition of the offense.
2. When a particular mental state is specified in conjunction with an element of an offense, proof of the existence of that element is not avoided because the actual result differed from that intended or that which was probable or likely under the circumstances either in kind or degree or because a different person or different property was injured or affected than that intended or than that which was probable or likely under the circumstances, unless such differences are sufficient without consideration of the mental state involved to constitute a defense or avoidance or unless such differences are of such magnitude that it would be unjust to find the element involved in light of such differences. [TCR 86-79]

3-204 Ignorance or mistake of fact.

1. The law provides that the actual state of mind which exists itself constitutes a defense when intent is an element of the offense. However, state of mind may be inferred from the acts of the defendant.
2. Although ignorance or mistake of fact will otherwise afford a defense to the offense charge, the defense is not available if the defendant would be guilty of another offense if the situation had been as he/she supposed, in which case the punishment available upon conviction shall not exceed that prescribed for the other offense. [TCR 86-79]

3-205 Liability for conduct of another.

1. A person is guilty of an offense if it is committed by his/her own conduct or by the conduct of another person for whom he/she is legally accountable, or both.
2. A person is legally accountable for the conduct of another person when:
   A. Acting with the kind of culpability that is sufficient for the commission of the offense, he/she causes an innocent or irresponsible person to engage in such conduct, or
   B. He/she is an accomplice of such other person in the commission of the offense.
3. A person is an accomplice of another person in the commission of an offense if:
   A. With the purpose of promoting or facilitating the commission of an offense, he/she (i) aids or agrees or attempts to aid such other person in planning or committing it; or (ii) having legal duty to prevent the commission of the offense, fails to make proper effort to do so.
   B. His/her conduct is expressly declared by law to establish his/her complicity.
4. When causing a particular result is an element of an offense, an accomplice in the conduct causing such result is an accomplice in the commission of that offense, if he/she acts with the kind of culpability, if any, with respect to that result that is sufficient for the commission of the offense.
5. A person who is legally incapable of committing a particular offense him/herself may be guilty thereof if it is committed by the conduct of another person for whom he/she is legally accountable, unless such liability is inconsistent with the purpose of his/her incapacity.
6. Unless otherwise provided by the Code or by the law defining the offense, a person is not an accomplice in an offense committed by another person if.

A. He/she is a victim of that offense; or
B. The offense is so defined that his/her conduct is inevitably incident to its commission; or
C. He/she terminates his/her complicity prior to the commission of the offense, and
   i. Wholly deprives it of effectiveness in the offense; or gives timely warning to law enforcement authorities or otherwise makes proper effort to prevent the commission of the offense.

7. An accomplice may be convicted on proof of the commission of the offense and of his/her complicity therein, though the person claimed to have committed the offense has not been prosecuted or convicted of a different offense or degree of offense or has immunity from prosecution or has been acquitted.
8. Notwithstanding the above, no person shall be held legally accountable in any criminal proceeding for another's criminal conduct solely because of their familial or marital relationship with any person accused of criminal conduct. [TCR 86-79]

3-206 Corporation and unincorporated associations.

1. A person is legally accountable for any conduct he/she performs or causes to be performed in the name of a corporation or unincorporated association or in its behalf to the same extent as if it were performed in his/her own name or behalf.
2. Whenever a duty to act is imposed by law upon a corporation or unincorporated association, any agent of the corporation or association having primary responsibility for the discharge of the duty is legally accountable for a reckless emission to perform the required act to the same extent as if the duty were imposed by law directly upon him/herself.
3. When a person is convicted of an offense by reason of his/her legal accountability for the conduct of a corporation or an unincorporated association, he/she is subject to the sentence authorized by law when a natural person is convicted of an offense of the class involved. [TCR 86-79]

3-207 Intoxication.

1. Except as provided in subsection (4) of this Section, intoxication of the actor is not a defense unless it negates an element of the offense, including, but not limited to, "specific intent."
2. When recklessness establishes an element of the offense, if the actor, due to self-induced intoxication, is unaware of risk of which he/she would have been aware had he/she been sober, such lack of awareness is not a defense to the crime charged.
3. Intoxication does not, in itself, constitute a mental disease as that term is used in this Code.
4. Intoxication which (A) is not self induced, or (B) is the result of intoxication excessive in degree given the amount of intoxicant, to which result the actor does not know he/she is susceptible, is an affirmative defense if by reason thereof the defendant lacks substantial capacity either to appreciate the wrongfulness of his/her conduct or to conform his/her conduct to the requirements of the law.
5. "Intoxication" means a disturbance of mental or physical capabilities and/or capacities resulting from the introduction of substances into the body. Except as otherwise provided in the Code, intoxication must be proven by use of scientific testing equipment e.g., intoxilyzer. The arresting officer must have reasonable grounds to believe that such person has alcohol in his/her body, or has committed a moving traffic violation, or has been involved in a traffic accident. [TCR 86-79]

3-208 Duress.

1. Except as herein otherwise provided, it is an affirmative defense that the actor engaged in conduct constituting an offense because he/she was coerced to do so by the use of, or threat to use, unlawful force against his/her person or the person of another, which a law-abiding person of reasonable firmness in his/her situation would have been unable to resist.
2. The defense provided in this Section is unavailable to a person who intentionally, knowingly, or recklessly places him/herself in a situation in which it is probable that he/she will be subject to duress.
3. It is not a defense that a spouse acted on the command of his/her spouse, unless they acted under coercion as would establish a defense under subsection (1) above. No presumption of duress arises from the mere presence of one spouse at the time the other acted.
4. The defense provided in this Section is unavailable in any situation where the coerced conduct threatens to cause death or serious bodily harm to some person other than the actor or does in fact cause such harm. [TCR 86-79]

3-209 Consent.

1. The consent of the victim to conduct constituting an offense or to the result thereof is a defense if such consent negates an element of the offense or precludes the infliction of the harm or evil sought to be prevented by the law defining the offense.
2. When conduct constitutes an offense because it threatens to cause or causes bodily harm, consent to such conduct or to the infliction of such harm is a defense only if:
   A. The bodily harm consented to or threatened by the conduct consented to is not serious; or
   B. The conduct and the harm are reasonably foreseeable hazards of joint participants in a lawful activity; or
   C. The consent establishes a justification for the conduct under this Code.
3. Unless otherwise provided by the Code or the law defining the offense, assent does not constitute consent if:
   A. It is given by a person who is legally incompetent to authorize the conduct constituting an offense; or
   B. It is given by a person who by reason of youth, mental disease or defect or intoxication is manifestly unable or known to the actor to be unable to make a reasonable judgment as to the nature or the harmfulness of the conduct constituting the offenses; or
   C. It is given by a person whose improvident consent is sought to be prevented by the law defining the offense; or
   D. It is induced by force, duress, or deception. [TCR 86-79]

3-210 Entrapment.

1. A public law enforcement officer or official or a person acting in cooperation with such an official perpetrates an entrapment if for the purpose of obtaining evidence of the commission of an offense, he/she induces or encourages another person to engage in conduct constituting an offense by either:
   A. Making knowingly false representations designed to induce the belief that such conduct is not prohibited; or
   B. Employing methods of persuasion or inducement which create a substantial risk that such an offense will be committed by persons other than those who are ready to commit it in the absence of such inducement.

2. The defense afforded by this Section shall be unavailable when causing or threatening bodily injury is an element of the offense charged and the prosecution is based on conduct causing or threatening such injury to a person other than the person perpetrating the entrapment.
3. Except as provided in (2) above, a person prosecuted for an offense shall be acquitted if he/she proves by a preponderance of the evidence that his/her conduct occurred in response to an entrapment. The issue of entrapment shall be tried to and decided by the court and not by jury. Evidence of past offenses shall be admissible only if the defendant takes the stand in his/her own defense. [TCR 86-79]

3-211 Mental disease or defect.

1. In any prosecution for an offense, it shall be a defense that the defendant, at the time of the conduct upon which the prosecution is based, as a result of mental disease or defect lacked substantial capacity either to appreciate the wrongfulness of his/her conduct or to conform his/her conduct to the requirement of the law.
2. As used in this Section, the terms mental diseases or defect do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.
3. The defense afforded by this Section shall not be available unless notice of intent to rely on such defense is given at least two weeks before trial. By giving such notice, the defendant will be deemed to have consented to be examined for the prosecution by not more than two professional medical or other experts for the purpose of ascertaining the state of defendant's mental health.
4. No person who, as a result of mental disease or defect, lacks capacity to understand the proceedings against him/her or to assist in his/her own defense shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity endures.
5. The defendant shall have the burden of proving by a preponderance of the evidence that he/she has a mental disease or defect within the meaning of this Section. [TCR 86-79]

3-212 Justification; terms defined. As used in Sections 3-212 to 3-222 unless the context otherwise requires:

1. "Unlawful forces" shall mean force, including confinement, which is employed without the consent of the person against whom it is directed and the employment of which constitutes an offense or actionable tort or would constitute such offense or tort except for a defense such as the absence of intent, negligence, or mental capacity, duress, youth, or diplomatic status; not amounting to a privilege to use the force;
2. "Assent" shall mean consent, whether or not it otherwise is legally effective, except assent to the infliction of death or serious bodily harm;
3. "Deadly force" shall mean force which the actor uses with the purpose of causing or which he/she knows to create a substantial risk of causing death or serious bodily harm. Purposely firing a firearm in the direction of another person or at a vehicle in which another person is believed to be constitutes deadly force. A threat to cause death or serious bodily harm, by the production of a weapon or otherwise, so long as the actor's purpose is limited to creating an apprehension that he/she will use deadly force if necessary, shall not constitute deadly force;
4. "Actor" shall mean any person who uses force in such a manner as to attempt to invoke the privileges and immunities afforded him/her by Sections 3-213 to 3-222, except any duly authorized law enforcement officer of the state, or the Winnebago Tribe of Nebraska, or the United States.
5. "Dwelling" shall mean any building or structure, though movable or temporary, or a portion thereto, which is for the time being the actor's home or place of lodging; and

6. "Public servants" shall mean any elected or appointed officer or employee of the Winnebago Tribe of Nebraska, the United States, or the state, except any duly authorized law enforcement officer of the state , the Winnebago Tribe of Nebraska, or the United States. [TCR 86-79]

3-213 Justification; choice of evils.

1. Conduct which the actor believes to be necessary to avoid a harm or evil to him/her or to another is justifiable if:
   A. The harm or evil sought to be avoided by such conduct is greater than that sought to be prevented by the law defining the offense charged;
   B. Neither Section 3-213 to 3-222, nor other law defining the offense provides exceptions for defenses dealing with the specific situation involved; and
   C. A legislative purpose to exclude the justification claimed does not otherwise plainly appear.
2. When the actor was reckless or negligent in bringing about the situation requiring a choice of harms or evils or in appraising the necessity for his/her conduct, the justification afforded by this Section is unavailable in prosecution for any offense for which recklessness or negligence, as the case may be, suffices to establish culpability. [TCR 86-79]

3-214 Public duty; execution.

1. Except as provided in subsection (2) of this Section, conduct is justifiable when it is required or authorized by:
   A. The law defining the duties or functions of a public officer or the assistance to be rendered to such officer in the performance of his/her duties;
   B. The law governing the execution of legal process;
   C. The judgment or order of a competent court or tribunal;
   D. The law governing the armed services or the lawful conduct of war; or
   E. Any other provision of law imposing a public duty.
2. Sections 3-213 to 3-222, shall apply to:
   A. The use of force upon or toward the person of another for any of the purposes dealt with in such sections; and
   B. The use of deadly force for any purpose, unless the use of such force is otherwise expressly authorized by law or occurs in the lawful conduct of war.
3. The justification afforded by subsection (1) of this Section shall apply:
   A. When the actor believes his/her conduct to be required or authorized by the judgment or direction of a competent court or tribunal or in the lawful execution of legal process, notwithstanding lack of jurisdiction of the court or defect in the legal process; and
   B. When the actor believes his/her conduct to be required or authorized to assist a public officer in the performance of his/her duties, notwithstanding that the officer exceeded this legal authority. [TCR 86-79]

3-215 Use of force; self-protection.

1. Subject to the provisions of this Section and of Section 3-220, the use of force upon or toward another person is justifiable when the actor believes that such force is immediately necessary for the purpose of protecting him/herself against the use of unlawful force by such other person on the present occasion.

2. The use of such force is not justifiable under this Section to resist an affect which the actor known is being made by a peace officer, although the arrest is unlawful.
3. The use of such force is not justifiable under this Section to resist force by the occupier or possessor of property or by another person on his/her behalf, where the actor knows that the person using the force is doing so under a claim of right to protect the property, except that this limitation shall not apply if:
   A. The actor is a public officer acting in the performance of his/her duties or person lawfully assisting him/her therein or a person making or assisting in a lawful arrest;
   B. The actor has been unlawfully dispossessed of the property and is making are entry or recapture justified by Section 3-217; or
   C. The actor believes that such force is necessary to protect him/herself against death or serious bodily harm.
4. The use of deadly force shall not be justifiable under this Section unless the actor believes that such force is necessary to protect him/herself against death, serious bodily harm, kidnapping or sexual intercourse compelled by force or threat, nor is it justifiable if:
   A. The actor, with the purpose of causing death or serious bodily harm, provoked the use of force against him/herself in the same encounter; or
   B. The actor knows that he/she can avoid the necessity of using such force with complete safety by retreating or by surrendering possession of a thing to a person asserting a claim of right thereto or by complying with a demand that he/she abstain from any action which he/she has no duty to take, except that:
      i. The actor shall not be obliged to retreat from his/her dwelling or place of work, unless he/she was the initial aggressor or is assailed in his/her place of work by another person whose place of work the actor knows it to be; and a public officer justified in using force in the performance of his/her duties or person justified in using force in his/her assistance or a person justified in using force in making an arrest or preventing an escape shall not be obliged to desist from efforts to perform such duty, effect such arrest or prevent such escape because of resistance or threatened resistance by or on behalf of the person against whom such action is directed.
5. Except as required by subsections (3) and (4) of this Section, a person employing protective force may estimate the necessity thereof under the circumstance as he/she believes them to be when the force is used, without retreating, surrendering possession, doing any other act which he/she has no legal duty to do, or abstaining from any lawful action.
6. The justification afforded by this Section extends to the use of confinement as protective force only if the actor takes all reasonable measures to terminate the confinement as soon as he/she knows that he/she safely can do so, unless the person confined has been arrested on charge of crime. [TCR 86-79]

3-216 Use of force; protection of other persons.

1. Subject to the provisions of this Section and of Section 3-210, the use of force upon or toward the person of another is justifiable to protect a third person when:
   A. The actor would be justified under Section 3-215, in using such force to protect him/herself against the injury he/she believes to be threatened to the person whom he/she seeks to protect;
   B. Under the circumstances as the actor believes them to be, the person whom he/she seeks to protect would be justified in using such protective force; and

C. The actor believes that his/her intervention is necessary for the protection of such other person.

2. Notwithstanding subsection (1) of this Section:
   A. When the actor would be obliged under Section 3-215 to retreat, to surrender the possession of a thing or to comply with a demand before using force in self-protection, he/she shall not be obliged to do so before using force for the protection of another person, unless he/she knows that he/she can thereby secure the complete safety of such other person;
   B. When the person whom the actor seeks to protect would be obliged under Section 3-215 to retreat, to surrender the possession of a thing or to comply with a demand if he/she knew that he/she could obtain complete safety by so doing, the actor is obliged to try to cause him/her to do so before using force in his/her protection if the actor knows that he/she can obtain complete safety in that way; and
   C. Neither the actor nor the person whom he/she seeks to protect is obliged to retreat when in the other's dwelling or place of work to any greater extent than in his/her own. [TCR 86-79]

3-217 Use of force; protection of property

1. Subject to the provisions of this Section and of Section 3-220, the use of force upon or toward the person of another is justifiable when the actor believes that such force is immediately necessary:
   A. To prevent or terminate an unlawful entry or other trespass upon land or a trespass against or the unlawful carrying away of tangible, movable property; provided, that such land or movable property is, or is believed by the actor to be, in his/her possession or in the possession of another person for whose protection he/she acts; or
   B. To effect an entry or reentry upon land or to retake tangible movable property; provided, that the actor believes that he/she or the person by whose authority he/she acts or a person from whom he/she or such other person derives title was unlawfully dispossessed of such land or movable property and is entitled to possession and provided that:
      i. The force is used immediately or on fresh pursuit after such dispossession; or
      ii. The actor believes that the person against whom he/she uses force has no claim of right to the possession of the property and, in the case of land, the circumstances, as the actor believes them to be, are of such urgency that it would be an exceptional hardship to postpone the entry or reentry until a court order is obtained.
2. For the purposes of subsection (1) of this Section:
   A. A person who had parted with the custody of property to another who refuses to restore it to him/her is no longer in possession, unless such property is movable and was and still is located on land in his/her possession;
   B. A person who has been dispossessed of land does not regain possession thereof merely by setting foot there on; and
   C. A person who has a license to use or occupy real property is deemed to be in possession thereof except against the licenser acting under claim of right.
3. The use of force is justifiable under this Section only if the actor first requests the person against whom such force is used to desist from his/her interference with the property, unless the actor believes that:
   A. Such request would be useless;
   B. It would be dangerous to him/herself or another person to make the request; or

C. Substantial harm will be done to the physical condition of the property which is sought to be protected before the request can effectively be made.

4. The use of force to prevent or terminate at trespass is not justifiable under this Section if the actor knows that dire exclusion of the trespasser will expose him/her to substantial danger of serious bodily harm.

5. The use of force to prevent an entry or reentry upon land or the recapture of movable property is not justifiable under this Section although the actor believes that such reentry or recapture is unlawful, if:
   A. The reentry or recapture is made by or on behalf of a person who was actually dispossessed of the property; and
   B. It is otherwise justifiable under subsection (l)(B) of this Section.

6. The use of deadly force is not justifiable under this Section unless the actor believes that the person against whom the force is used is attempting to commit or consummate arson, burglary, robbery or other felonious theft or property destruction and either:
   A. Has employed or threatened deadly force against or in the presence of the actor; or
   B. The use of force other than deadly force to prevent the commission or the consummation of the crime would expose the actor or another in his/her presence to substantial danger of serious bodily harm.

7. The justification afforded by this Section extends to the use of confinement as protective force only if the actor takes all reasonable measures to terminate the confinement as soon as he/she knows that he/she can do so with safety to the property, unless the person confined has been arrested on a charge of crime.

8. The justification afforded by this Section extends to the use of advice for the purpose of protecting property only if:
   A. Such device is not designed to cause or known to create a substantial risk of causing death or serious bodily harm;
   B. Such use of the particular device to protect such property from entry or trespass is reasonable under the circumstances, as the actor believes them to be; and
   C. Such device is one customarily used for such a purpose or reasonable care is taken to make known to probable intruders the fact that it is used.

9. The use of force to pass a person whom the actor believes to be purposely or knowingly and unjustifiably obstructing the actor from going to a place to which he/she may lawfully go is justifiable if:
   A. The actor believes that the person against whom he/she uses force has no claim of right to obstruct the actor;
   B. The actor is not being obstructed from entry or movement on land which he/she knows to be in the possession or custody of the person obstructing him/her, or in the possession or custody of another person by whose authority the obstructer acts, unless the circumstances, as the actor believes them to be, are of such urgency that it would not be reasonable to postpone the entry or movement on such land until a court order is obtained; and
   C. The force used is not greater than would be justifiable if the person obstructing the actor were using force against him/her to prevent his/her passage. [TCR 86-79]

3-218 Use of force; law enforcement.

1. Subject to the provisions of this Section and of Section 3-220, the use of force upon or toward the person of another is justifiable when the actor is making or assisting an arrest and the actor believes that such force is immediately necessary to effect a lawful arrest.

2. The use of force is not justifiable under this Section unless:
   A. The actor makes known the purpose of the arrest or believes that it is otherwise known by or cannot reasonably be made known to the person to be arrested; and
   B. When the arrest is made under a warrant, the warrant is valid or believed by the actor to be valid.
3. The use of deadly force is not justifiable under this Section unless:
   A. The arrest is for a criminal offense;
   B. Such person effecting the arrest is authorized to act as a peace officer or is assisting a person whom he/she believes to be authorized to act as a peace officer;
   C. The actor believes that the force employed creates no substantial risk of injury to innocent persons; and the actor reasonably believes that: force; or the crime for which the arrest is made involved conduct including the use or threatened use of deadly.
      i. There is a substantial risk that the person to be arrested will cause death or serious bodily harm if this apprehension is delayed.
4. The use of reasonable force to prevent the escape of an arrested person from custody is justifiable. A guard or other person authorized to act as a peace officer is justified in using reasonable force which he/she believes to be immediately necessary to prevent the escape of a person from jail, prison, or other institution for the detention of persons charged with or convicted of a crime.
5. A private person who assists another private person in effecting an unlawful arrest, or who assists a peace officer in effecting an unlawful arrest, is justified in using force which he/she would be justified in using if the arrest were lawful, if:
   A. He/she reasonably believes the arrest is lawful; and
   B. The arrest would be lawful if the facts were as he/she believes them to be.
6. The use of force upon or toward the person of another is justifiable when the actor believes that such force is immediately necessary to prevent such other person from committing suicide, inflicting serious bodily harm upon him/herself, committing or consummating the commission of a crime involving or threatening bodily harm, damage to or loss of property or a breach of the peace, except that:
   A. Any initiation imposed by the other provisions of Sections 3-212 to 3-222 on the justifiable use of force in self-protection, for the protection of others, the protection of property, the effectuation of an arrest or the prevention of an escape from custody shall apply notwithstanding the criminality of the conduct against which such force is used; and
   B. The use of deadly force is not in any event justifiable under this subsection unless the actor reasonably believes that there is a substantial risk that the person who he/she seeks to prevent from committing a crime will cause death or serious bodily harm to another unless the commission or the consummation of the crime is prevented and that the use of such force presents no substantial risk of injury to innocent persons.
7. The justification afforded by subsection (6) of this Section extends to the use of confinement as preventive force only if the actor takes all reasonable measures to terminate the confinement as soon as he/she knows that he/she safely can do so, unless the person confined has been arrested on a charge of crime. [TCR 86-79, 89-87]

3-219 Use of force by person with special responsibility for care, discipline, or safety of others. The use of force upon or toward the person of another is justifiable if:

1. The actor is the parent or guardian or other person similarly responsible for the general care and supervision if a minor or a person acting at the request of such parent, guardian or other responsible person and:

A. Such force is used for the purpose of safeguarding or promoting the welfare of the minor, including the prevention or punishment of his/her misconduct; and

B. Such force used is not designed to cause or known to create a substantial risk of causing death, serious bodily harm, disfigurement, extreme pain or mental distress or gross degradation; or

2. The actor is a teacher or a person otherwise entrusted with the care or supervision for a special purpose of a minor and:

A. The actor believes that the force used is necessary to further such special purpose, including the maintenance of reasonable discipline in a school, class or other group, and that the use of such force is consistent with the welfare of the minor; and

B. The degree of force, if it had been used by the parent or guardian of the minor, would not be unjustifiable under subdivision (1)(B) of this Section;

3. The actor is the guardian or other person similarly responsible for the general care and supervision of an incompetent person, and:

A. Such force is used for the purpose of safeguarding or promoting the welfare of the incompetent person, including the prevention of his/her misconduct, or, when such incompetent person is in a hospital or other institution for his/her care and custody, for the maintenance of reasonable discipline in such institution; and

B. Such force used is not designed to cause or known to create a substantial risk of causing death, serious bodily harm, disfigurement, extreme or unnecessary pain, mental distress, or humiliation;

4. The actor is a doctor or other therapist or a person assisting him/her at his/her direction, and:

A. Such force is used for the purpose of administering a recognized form of treatment which the actor believes to be adapted to promoting the physical or mental health of the patient; and

B. Such treatment is administered with the consent of the patient or, if the patient is a minor or an incompetent person, with the consent of his/her parent or guardian or other person legally competent to consent in his/her behalf, or the treatment is administered in an emergency when the actor believes that no one competent to consent can be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent;

5. The actor is a jailer or other authorized official of a jail and:

A. He/she believes that the force used is necessary for the purpose of enforcing the lawful rules or procedures of the institution, unless his/her belief in the lawfulness of the rule or procedure sought to be enforced is erroneous and his/her error is the result of ignorance or mistake as to the provisions of Sections 3-212 to 3-222, any other provisions of the criminal law, or the law governing the administration of the institution;

B. The nature or degree of force used is not forbidden by Sections 3-214 to 3-215; and

C. If deadly force is used, its use is otherwise justifiable under Sections 3-212 to 3-222;

6. The actor is a person who is authorized or required by law to maintain order or decorum in a vehicle, train or other carrier or in a place where others are assembled, and:

A. He/she believes that the force used is necessary for such purpose; and

B. Such force used is not designed to cause or known to create a substantial risk of causing death, bodily harm, or extreme mental distress. [TCR 86-79]

3-220 Mistake of law; reckless or negligent use of force.

1. The justification afforded by Sections 3-215 to 3-218, is unavailable when:

A. The actor's belief in the unlawfulness of the force or conduct against which he/she employs protective force or his/her belief in the lawfulness of an arrest which he/she endeavors to effect by force is erroneous; and

B. His/her error is the result of ignorance or mistake as to the provisions of Sections 3-212 to 3-222, any other provision of the criminal law, or the law governing the legality of an arrest or search.

2. When the actor believes that the use of force toward another person is justifiable (as under Sections 3-216 to 3-219), but, the actor is reckless or negligent in having such belief, the justification afforded by those sections is unavailable in a prosecution or an offense for which recklessness or negligence, as the case may be, suffices to establish culpability.
3. When the actor is justified under Sections 3-214 to 3-219 in using force upon or toward the person of another but he/she recklessly or negligently injures or creates a risk of injury to innocent persons, the justification afforded by those sections is unavailable in a prosecution for such recklessness or negligence towards innocent persons. [TCR 86-79]

3-221 Justification in property crimes. Conduct involving the appropriation, seizure or destruction of, damage to, intrusion on or interference with property is justifiable under circumstances which would establish a defense of privilege in a civil action based thereon, unless:

1. Sections 3-212 to 3-222, or the law defining the offense deals with the specific situation involved; or
2. A legislative purpose to exclude the justification claimed otherwise plainly appears. [TCR 86-79]

3-222 Justification an affirmative defense; civil remedies unaffected.

1. In any prosecution based on conduct which is justifiable under Sections 3-212 to 3-222, justification is an affirmative defense.
2. The fact that conduct is justifiable under Sections 3-212 to 3-222, does not abolish or impair any remedy for such conduct which is available in any civil action. [TCR 86-79]

TITLE 3
ARTICLE 3
CRIMES AGAINST PROPERTY

3-301 Building defined.
3-302 Arson, first degree; penalty.
3-303 Arson, second degree; penalty.
3-304 Arson, third degree; penalty.
3-305 Burning to defraud insurer; penalty.
3-306 Burglary; penalty.
3-307 Possession of burglary tools; penalty.
3-308 Breaking and entering; penalty.
3-309 Theft; terms defined.
3-310 Consolidation of theft offenses.
3-311 Theft by unlawful taking or disposition.
3-312 Theft by shoplifting; penalty.
3-313 Theft by deception.
3-314 Theft by extortion.
3-315 Theft of property lost, mislaid, delivered by mistake; penalty.
3-316 Theft of services; penalty.
3-317 Unauthorized use of a propelled vehicle; affirmative defense; penalty.
3-318 Theft by receiving stolen property.
3-319 Grading of theft offenses.
3-320 Criminal mischief; penalty.
3-321 Criminal trespass; penalty.
3-322 Repealed.
3-323 Criminal trespass, affirmative defenses.
3-324 Littering of public and private property; penalty.
3-325 Forgery; terms defined.
3-326 Forgery, first degree; penalty.
3-327 Forgery, second degree; forgery penalties.
3-328 Criminal possession of a forged instrument; penalty.
3-329 Criminal possession of forgery devices; penalty.
3-330 Criminal simulation; penalty.
3-331 Criminal impersonation; penalty.
3-332 Issuing a bad check; penalty.
3-333 False statement or book entry; destruction or secretion of records; penalty; organization defined.
3-334 Commercial bribery and breach of duty to act disinterestedly; penalty.
3-335 Fraudulent use of credit card; penalty.
3-336 Deceptive business practices; penalty.
3-337 Defrauding creditors; penalty.
3-338 Securing execution of documents by deception; penalty.
3-339 Criminal usury; penalty.
3-340 Unlawful dealing with property by a fiduciary; penalty.
3-341 Making a false credit report; penalty.
3-342 Computers; terms defined.
3-343 Depriving or obtaining property or services; penalty.
3-344 Unlawful acts; harming or disrupting operations; penalties.
3-345 Unlawful acts; obtaining confidential public information; penalties.
3-346 Unlawful acts; access without authorization; exceeding authorization; penalties.

3-301 Building defined. As used in this Article, unless the context otherwise requires, building shall mean a structure which has the capacity to contain, and is designed for the shelter of man, animals, or property, and includes ships, trailers, sleeping cars, aircraft, or other vehicles or places adapted for overnight accommodations of persons or animals, or for carrying on of business therein, whether or not a person or animal is actually present. If a building is divided into units for separate occupancy, any unit not occupied by the defendant is a building of another. [TCR 86-79]

3-302 Arson, first degree; penalty.

1. A person commits arson in the first degree if he/she intentionally damages a building by starting a fire or causing an explosion when another person is present in the building at the time and either:
   a. The actor knows that fact; or

b. The circumstances are such as to render the presence of a person therein a reasonable probability.

2. A person commits arson in the first degree if a fire is started or an explosion is caused in the perpetration of any robbery, burglary, or criminal mischief when another person is present in the building at the time and either:
   a. The actor knows that fact; or
   b. The circumstances are such as to render the presence of a person therein a reasonable probability.
3. Arson in the first degree is a Class I offense. [TCR 86-79]

3-303 Arson, second degree; penalty.

1. A person commits arson in the second degree if he/she intentionally damages a building by starting a fire or causing an explosion or if a fire is started or an explosion is caused in the perpetration of any robbery, burglary, or criminal mischief.
2. The following affirmative defenses may be introduced into evidence upon prosecution for a violation of this Section:
   a. No person other than the accused has a security or proprietary interest in the damaged building, or, if other persons have such interests, all of them consented to his/her conduct; or
   b. The accused's sole intent was to destroy or damage the building for a lawful and proper purpose.
3. Arson in the second degree is a Class II offense. [TCR 86-79]

3-304 Arson, third degree; penalty.

1. A person commits arson in the third degree if he/she intentionally sets fire to, burns, causes to be burned, or by the use of any explosive, damages or destroys, any property of another without his/her consent, other than a building or occupied structure.
2. Arson in the third degree is a Class III offense. [TCR 86-79]

3-305 Burning to defraud insurer; penalty. Any person who, with the intent to deceive or harm an insurer, sets fire to or burns or attempts so to do, or who causes to be burned, or who aids, counsels or procures the burning of any building or personal property, of whatsoever class or character, whether the property is of him/herself or of another, which shall at the time be insured by any person, company or corporation against loss or damage by fire, commits a Class I offense. [TCR 86-79]

3-306 Burglary; penalty.

1. A person commits burglary if such person willfully, maliciously, and forcibly breaks and enters any real estate or any improvements erected thereon with intent to commit any criminal offense, or with intent to steal property of any value.
2. Burglary is a Class I offense. [TCR 86-79]

3-307 Possession of burglary tools; penalty.

1. A person commits the offense of possession of burglary tools if:

A. He/she knowingly possesses any explosive, tool, instrument, or other article adapted, designed, or commonly used for committing or facilitating the commission of an offense involving forcible entry into premises or theft by a physical taking; and

B. He/she intends to use the explosive, tool, instrument, or article, or knows some person intends ultimately to use it, in the commission of an offense of the nature described in subdivision (1)(A) of this Section.

2. Possession of burglary tools is a Class III offense. [TCR 86-79, 89-87]

3-308 Breaking and entering; penalty.

1. It shall be unlawful to break into by any force whatsoever and enter in any manner any dwelling, building, office, room, pol-do stable, garage, tent, vessel, apartment, tenement, chee-poda-ke, shop, warehouse, store, mill, barn, railroad car, airplane, motor vehicle, trailer or semi-trailer, mobile home, trunk, drawer, box, coin operated machine, or similar structure, object, or device of another without consent with the intent to:

   A. Cause annoyance or injury to any person therein; or

   B. Cause damage to any property therein; or

   C. Commit any offense therein; or

   D. Steal; or

   E. Cause, or does actually cause, whether intentionally or recklessly, fear for the safety or another.

2. Breaking and entering is Class III offense. [TCR 86-79]

3-309 Theft; terms defined. As used in Sections 3-309 to 3-319, unless the context otherwise requires:

1. "Deprive" shall mean:

   A. To withhold property of another permanently or for so extended a period as to appropriate a major portion of its economic value, or with intent to restore only upon payment of reward or other compensation; or

   B. To dispose of the property of another so as to create a substantial risk that the owner will not recover it in the condition it was when the actor obtained it.

2. "Financial institution" shall mean a bank, insurance company, credit union, building and loan association, investment trust, or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment;

3. "Movable property" shall mean property the location of which can be changed, including things growing on, affixed to, or found in land, and documents although the rights represented thereby may have no physical location. Immovable property shall mean all other property.

4. "Obtain" shall mean:

   A. In relation to property, to bring about a transfer or purported transfer of a legal interest in the property, whether to the obtainer or another; or

   B. In relation to labor or service, to secure performance thereof.

5. "Property" shall mean anything of value, including real estate, tangible and intangible personal property, contract rights, credit cards, charge plates, or any other instrument which purports to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer, chooses in action and other interests in or claims to wealth, admission or transportation tickets, captured or domestic animals, food and drink, electric or other power;

6. "Property of another" shall mean property in which any person other than the actor has an interest which the actor is not privileged to infringe, regardless of the fact that the actor also has an interest

in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement;

7. "Receiving" shall mean acquiring possession, control or title, or lending on the security of the property, and
8. "Stolen" shall mean property which has been the subject of theft or robbery or a vehicle which is received from a person who is then in violation of Section 3-318. [TCR 86-79]

3-310 Consolidation of theft offenses. Conduct denominated theft in Sections 3-309 to 3-319 constitutes a single offense embracing the separated offenses heretofore known as larceny, embezzlement, false pretense, extortion, blackmail, fraudulent conversion, receiving stolen property, and the like. An accusation of theft may be supported by evidence that it was committed in any manner that would be theft under Sections 3-309 to 3-319, notwithstanding the specification of a different manner in the indictment or information, subject only to the power of the court to insure fair trial by granting a continuance or other appropriate relief where the conduct of the defense would be prejudiced by lack of fair notice or by surprise. [TCR 86-79]

3-311 Theft by unlawful taking or disposition.

1. A person is guilty of theft if he/she takes, or exercises control over, movable property of another with the intent to deprive him/her thereof.
2. A person is guilty of theft if he/she transfers immovable property of another or any interest therein with the intent to benefit him/herself or another not entitled thereto.
3. For the purposes of this Section, it shall be presumed that a lessee's failure to return leased or rented movable property to the lessor after the expiration of a written lease or written rental agreement is done with intent to deprive if such lessee has been mailed notice by certified mail that such lease or rental agreement has expired and he/she has failed within ten (10) days after such notice to return such property. [TCR 86-79]

3-312 Theft by shoplifting: penalty.

1. A person commits the crime of theft by shoplifting when he/she, with the intent of appropriating merchandise to his/her own use without paying for the same or to deprive the owner of possession of such property or its retail value, in whole or in part, does any of the following:
   A. Conceals or takes possession of the goods or merchandise of any store or retail establishment;
   B. Alters the price tag or other price marking on goods or merchandise of any store or retail establishment;
   C. Transfers the goods or merchandise of any store or retail establishment from one container to another;
   D. Interchanges the label or price tag from one item of merchandise with a label or price tag for another item of merchandise; or
   E. Causes the cash register or other sales recording device to reflect less than the retail price of the merchandise. [TCR 86-79]

3-313 Theft by deception. A person commits theft if he/she obtains property of another by deception. A person deceives if he/she intentionally:

1. Creates or reinforces a false impression, including false impressions as to law, value, intention, or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he/she did not subsequently perform the promise; or
2. Prevents another from acquiring information which would affect his/her judgment of transaction; or
3. Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he/she stands in a fiduciary or confidential relationship; or
4. Uses a credit card, charge plate, or any other instrument which purports to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer:
   A. Where such instrument has been stolen, forged, revoked or canceled, or where for any other reason its use by the actor is unauthorized; or
   B. Where the actor does not have the intention and ability to meet all obligations to the issuer arising out of his/her use of the instrument. The word deceive does not include falsity as to matter having no pecuniary significance, or statements unlikely to deceive ordinary persons in the group addressed. [TCR 86-79]

3-314 Theft by extortion.

1. A person commits theft if he/she obtains property of another by threatening to:
   A. Inflict bodily injury on anyone or commit any other criminal offense; or
   B. Accuse anyone of a criminal offense; or
   C. Expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his/her credit or business repute; or
   D. Take or withhold action as an official, or cause an official to take or withhold action; or
   E. Bring about or continue a strike, boycott, or other collective unofficial action, if the property is not received for the benefit of group in whose interest the actor purports to act; or
   F. Testify or provide information or withhold testimony or information with respect to another's legal claim or defense.
   G It is an affirmative defense to prosecution based on subdivision (1)(B), (1)(C), or (1)(D) of this Section that the property obtained by threat of accusation, exposure, lawsuit or other invocation of official action was honestly claimed as restitution or indemnification for harm done in the circumstances to which such accusation, exposure, lawsuit or other official action relates, or as compensation for property or lawful services. [TCR 86-79]

3-315 Theft of property lost, mislaid, or delivered by mistake; penalty. A person who comes into control of property of another that he/she knows to have been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient commits theft if, with intent to deprive the owner thereof, he/she fails to take reasonable measures to restore the property to a person entitled to have it. Any person violating the provisions of this Section shall upon conviction thereof, be punished by the penalty prescribed in the next lower classification below the value of the item lost, mislaid, or delivered under mistake pursuant to Section 3-319. [TCR 86-79]

3-316 Theft of services; penalty.

1. A person commits theft if he/she obtains services which he/she knows are available only for compensation, by deception or threat, or by false token or other means to avoid payment for the service. Services include labor, professional service, telephone service, electric service, other public service, accommodation in hotels, restaurants or elsewhere, admission to exhibitions, and use of vehicles or other movable property. Where compensation for service is ordinarily paid immediately upon the rendering of such service, as in the case of hotels and restaurants, refusal to pay or absconding without payment or offer to pay gives rise to a presumption that the service was obtained by deception as to intention to pay.
2. A person commits theft if having control over the disposition of services of others, to which he/she is not entitled, he/she diverts such services to his/her own benefit or to the benefit of another not entitled thereto.
3. Any person who makes or possesses any device, instrument, apparatus, or equipment designed or which can be used to obtain telecommunications service fraudulently or to conceal from any supplier of telecommunications service or from any lawful authority the existence or place of origin or of destination of any telecommunication; or who sells, gives or otherwise transfers to another, or offers or advertises for sale, any such device, instrument, apparatus, or equipment, or plans or instructions for making or assembling the same, under circumstances evincing an intent to use or employ such device, instrument, apparatus, or equipment, or to allow the same to be used or employed, for a purpose described in this subsection, or knowing or having reason to believe that the same is intended to be used, or that the plans or instructions are intended to be used, for making or assembling such device, instrument, apparatus, or equipment is guilty of a Class II offense. [TCR 86-79]

3-317 Unauthorized use of a propelled vehicle; affirmative defense; penalty.

1. A person commits the offense of unauthorized operation of a propelled vehicle if he/she intentionally exerts unauthorized control over another's propelled vehicle by operating the same without the owners consent.
2. Propelled vehicle shall mean an automobile, airplane, motorcycle, motorboat, or other self-propelled vehicle.
3. It shall be an affirmative defense to a prosecution under this Section that the defendant reasonably believes the owner would have authorized the use had he/she known of it.
4. In addition to the penalty for a Class III offense, the offender shall be required to make restitution in the amount of damages sustained while the vehicle was in the custody, possession, or under the control of the offender. [TCR 86-79]

3-318 Theft by receiving stolen property. A person commits theft if he/she receives, retains, or disposes of stolen movable property of another knowing that it has been stolen, or believing that it has been stolen, unless the property is received, retained, or disposed with intention to restore it to the owner. [TCR 86-79]

3-319 Grading of theft offenses.

1. Theft constitutes a Class I offense when the value of the thing involved is over five thousand dollars ($5,000.00).
2. Theft constitutes a Class II offense when the value of the thing involved is one thousand dollars ($1,000.00) or more, but not over five thousand dollars ($5,000.00).

3. Theft constitutes a Class III offense when the value of the thing involved is less than one thousand dollars ($1,000.00). [TCR 86-79, 89-87]

3-320 Criminal mischief; penalty.

1. A person commits criminal mischief if he/she:
   A. Damages property of another intentionally or recklessly; or
   B. Intentionally tampers with property of another so as to endanger person or property; or
   C. Intentionally or maliciously causes another to suffer pecuniary loss by deception or threat.
2. Criminal mischief is a Class I offense if the actor intentionally causes pecuniary loss in excess of five thousand dollars ($5,000.00), or a substantial interruption or impairment of public communication, transportation, supply of water, gas or power, or other public service.
3. Criminal mischief is a Class II offense if the actor intentionally causes pecuniary loss in excess of one thousand dollars ($1,000.00), but not over five thousand dollars ($5,000.00).
4. Criminal mischief is a Class III offense if the actor intentionally or recklessly causes pecuniary loss in an amount of one thousand dollars ($1,000.00) or less, or if his/her action results in no pecuniary loss. [TCR 86-79, 89-87]

3-321 Criminal trespass; penalty.

1. A person commits the offense of criminal trespass if, knowing that he/she is not licensed or privileged to do so, he/she enters or secretly remains in any building or occupied structure, or any separately secured or occupied portion thereof; or
2. If, knowing he/she is not licensed or privileged to do so, he/she enters or remains in any place as to which notice against trespass is given by:
   A. Actual communication to the actor; or
   B. Posting in a manner prescribed by law or reasonably likely to come to the attention of intruders; or
   C. Fencing or other enclosure manifestly designed to exclude intruders.
3. Criminal trespass is a Class III offense. [TCR 86-79, 89-87]

3-322 REPEALED. [TCR 86-79, 89-87]

3-323 Criminal trespass; affirmative defenses. It is an affirmative defense to prosecution under Section 3-321 that:

1. A building or occupied structure involved in an offense under Section 3-321 was abandoned; or
2. The premises were at the time open to members of the public and the actor complied with all lawful conditions imposed on access to or remaining in the premises; or
3. The actor reasonably believed that the owner of the premises or other person empowered to license access thereto would have licensed him/her to enter or remain; or
4. The actor was in the process of navigating or attempting to navigate with a non-powered vessel any stream or river on this reservation and found it necessary to portage or otherwise transport the vessel around any fence or obstructions in such stream or river. [TCR 86-79]

3-324 Littering of public and private property; penalty.

1. Any person who deposits, throws, discards, or otherwise disposes of any litter on any public or private property, or in any waters, commits the offense of littering unless:
   A. Such property is an area designated by law for the disposal of such material and such person is authorized by the proper public authority to so use such property; or
   B. Such person is authorized by the owner of the private property to use such property for such purpose.
2. The word litter as used in this Section shall mean all waste material susceptible of being dropped, deposited, discarded, or otherwise disposed of by any person upon any property on the reservation, but does not include wastes of primary processes of farming or manufacturing. Waste material as used in this subsection shall mean any material appearing in a place or in a context not associated with that material's function or origin.
3. Whenever litter is thrown, deposited, dropped, or dumped from any motor vehicle or watercraft in violation of this Section, the operator of such motor vehicle or watercraft commits the offense of littering.
4. Littering is an infraction. [TCR 86-79, 89-87]

3-325 Forgery; terms defined. As used in Sections 3-325 to 3-334, unless the context otherwise requires:

1. "Written instrument" shall mean any paper, document, or other instrument containing written or printed matter used for purposes of reciting, embodying, conveying, or recording information, and any money, credit card, token, stamp, seal, badge, trade-mark, or any evidence or symbol of value, right, privilege, or identification which is capable of being used to the advantage or disadvantage of some person;
2. "Complete written instrument" shall mean a written instrument which purports to be genuine and fully drawn with respect to every essential feature thereof;
3. Incomplete written instruments shall mean one which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument;
4. "To falsely make written instruments" shall mean to make or draw a written instrument, whether complete or incomplete, which purports to be an authentic creation of its ostensible maker, but which is not, either because the ostensible maker is fictitious or because, if real, he/she did not authorize the making or the drawing thereof;
5. "To falsely complete a written instrument" shall mean to transform an incomplete written instrument into a complete one by adding, inserting, or changing matter without the authority of anyone entitled to grant such authority, so that the complete written instrument falsely appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible maker;
6. "To falsely alter a written instruments" shall mean to change a written instrument without the authority of anyone entitled to grant such authority, whether it be in complete or incomplete form, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or by any other means, so that such instrument in its thus altered form falsely appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible maker;
7. "Forged instrument" shall mean a written instrument which has been falsely made, completed, endorsed or altered. The terms forgery and counterfeit and their variants are intended to be synonymous in legal effect as used in this Article;
8. "Possess" shall mean to receive, conceal, or otherwise exercise control over; and

9. "Utter" shall mean to issue, authenticate, transfer, sell, transmit, present, use, pass, or deliver, or to attempt or cause such uttering. [TCR 86-79]

3-326 Forgery, first degree; penalty. A person commits forgery in the first degree if, with intent to deceive or harm, he/she falsely makes, completes, endorses, alters, or utters a written instrument which is or purports to be, or which is calculated to become or to represent if completed:

A. Part of an issue of money, stamps, securities, or other valuable instruments issued by a government or governmental agency; or
B. Part of an issue of stock, bonds, bank notes, or other instruments representing interests in or claims against a corporate or other organization or its property. [TCR 86-79, 89-87]

3-327 Forgery, second degree; forgery penalties.

1. Whoever, with intent to deceive or harm, falsely makes, completes, endorses, alters, or utters any written instrument which is or purports to be, or which is calculated to become or to represent if completed, a written instrument which does or may evidence, create, transfer, terminate, or otherwise affect a legal right, interest, obligation, or status, commits forgery in the second degree.
2. Forgery is a Class I offense when the face value, or purported face value, or the amount of any proceeds wrongfully procured or intended to be procured by the use of such instrument, is more than five thousand dollars ($5,000.00).
3. Forgery is a Class II offense when the face value or amount of proceeds exceeds one thousand dollars ($1,000.00) but is not over five thousand dollars ($5,000.00).
4. Forgery is a Class III offense when the face value or amount of proceeds is one thousand dollars ($1,000.00) or less. [TCR 86-79, 89-87]

3-328 Criminal possession of a forged instrument; penalty.

1. Whoever, with knowledge that it is forged and with intent to deceive or harm, possesses any forged instrument covered by Section 3-326 or 3-327 commits criminal possession of a forged instrument shall be penalized according to Section 3-327 and the value of the instrument or proceeds of a purported instrument. [TCR 86-79, 89-87]

3-329 Criminal possession of forgery devices; penalty.

1. A person commits criminal possession of forgery devices when:
   A. He/she makes or possesses with knowledge of its character any plate, die, or other device, apparatus, equipment, or article specifically designed for use in counterfeiting, unlawfully simulating, or otherwise forging written instruments; or
   B. He/she makes or possesses any device, apparatus, equipment, or article capable of or adaptable to a use specified in subsection (1)(A) of this Section, with intent to use it him/herself, or to aid or permit another to use it, for purposes of forgery; or
   C. Illegally possesses a genuine plate, die or other device used in the production of written instruments, with intent to deceive or harm.
2. Criminal possession of forgery devices is a Class II offense. [TCR 86-79]

3-330 Criminal simulation; penalty.

1. A person commits a criminal simulation when:
   A. With intent to deceive or harm, he/she makes, alters, or represents an object in such fashion that it appears to have an antiquity, rarity, source or authorship, ingredient, or composition which it does not in fact have; or
   B. With knowledge of its true character and with intent to use to deceive or harm, he/she utters, misrepresents, or possesses any object so simulated.
2. Criminal simulation is a Class II offense. [TCR 86-79]

3-331 Criminal impersonation; penalty.

1. A person commits the crime of criminal impersonation if he/she:
   A. Assumes a false identity and does an act in his/her assumed character with intent to gain a pecuniary benefit for him/herself or another, or to deceive or harm another; or
   B. Pretends to be representative of some person or organization and does an act in his/her pretended capacity with the intent to gain a pecuniary benefit for him/herself or another, and to deceive or harm another; or
   C. Carries on any profession, business, or any other occupation without a license, certificate, or other authorization required by law.
2. Criminal impersonation is a Class I offense. [TCR 86-79]

3-332 Issuing a bad check; penalty.

1. Whoever obtains property, services, or present value of any kind by issuing or passing a check or similar signed order for the payment of money, knowing that he/she has no account with the drawee at the time the check or order is issued, or, if he/she has such an account, knowing that he/she does not have sufficient funds in, or credit with, the drawee for the payment of such check or order in full upon its presentation, commits the offense of issuing a bad check.
2. Upon request of the depositor and the payment of seven dollars ($7.00) for each check, draft, order or assignment of funds, the Tribal prosecutor shall mail notice to the person issuing the check or order at his/her last known address that such check or order has been returned to the depositor. The seven dollar ($7.00) payment shall be payable to the Tribal Court.
3. In any prosecution where the person issuing the check has an account with the drawee, he/she shall be presumed to have known that he/she did not have sufficient funds in, or credit with, the drawee for the payment of such check or order in full upon its presentation, if, within thirty days after issuance of the check or order, he/she has been notified that the drawee refused payment for lack of funds and he/she has failed within ten days after such notice to make the check good or has failed to make the check good within ten days of notice by mail from the Tribal prosecutor.
4. Offenses under this Section shall be classified as follows:
   A. Issuing a bad check is a Class I offense when the value of the insufficient amount is over five thousand dollars ($5,000.00).
   B. Issuing a bad check is a Class II offense when the value of the insufficient amount is one thousand dollars ($1,000.00) or more, but not over five thousand dollars ($5,000.00).
   C. Issuing a bad check is a Class III offense when the value of the insufficient amount is less than one thousand dollars ($1,000.00).
5. Any person convicted of violating this Section may, in addition to being fined or imprisoned, be ordered to make restitution to the party injured for the value of the check, draft, order, or assignment of funds and any costs of filing with the Tribal prosecutor. If the court shall in addition

to sentencing any person to imprisonment under this Section also enter an order of restitution, the time permitted to make such restitution shall not be concurrent with the sentence of imprisonment.

6. The fact that restitution to the party injured has been made shall be a mitigating factor in the imposition of punishment for any violation of this Section. [TCR 86-79, 89-87]

3-333 False statement or book entry; destruction or secretion of records; penalty; organization, defined.

1. A person commits a Class I offense if he/she:
   - A. Willfully and knowingly subscribes to, makes, or causes to be made any false statement or entry in the books of an organization; or
   - B. Knowingly subscribes to or exhibits false papers with the intent to deceive any person or persons authorized to examine into the affairs of any such organization; or
   - C. Makes, states, or publishes any false statement of the amount of the assets or liabilities of any such organization; or
   - D. Fails to make true and correct entry in the books and records of such organization of its business and transactions; or
   - E. Mutilates, alters, destroys, secrets, or removes any of the books or records of such organization, without the consent of the executive director of the organization.
2. Organization as used in this Section shall mean:
   - A. Any organization chartered by the Winnebago Tribe of Nebraska; or
   - B. Any organized group of persons performing community activities as approved by the Winnebago Tribe of Nebraska; or
   - C. The various committees authorized to conduct specified projects on behalf of the Winnebago Tribe of Nebraska. [TCR 86-79]

3-334 Commercial bribery and breach of duty to act disinterestedly; penalty.

1. A person commits a Class I offense if he/she solicits, accepts, or agrees to accept any benefit as consideration for knowingly violating or agreeing to violate a duty of fidelity to which he/she is subject as:
   - A. Agent or employee; or
   - B. Trustee, guardian, or other fiduciary; or
   - C. Lawyer, physician, accountant, appraiser, or other professional advisor; or
   - D. Officer, director, partner, manager, or other participant in the direction of the affairs of an incorporated or unincorporated association; or
   - E. Duly elected or appointed representative or trustee of a labor organization or employee of a welfare trust fund; or
   - F. Arbitrator or other purportedly disinterested adjudicator or referee.
2. A person who holds him/herself out to the public as being engaged in the business of making disinterested selection, appraisal, or criticism of commodities, property, or services, commits a Class I offense if he/she solicits, accepts, or agrees to accept any benefit to alter, modify, or change his/her selection, appraisal, or criticism.
3. A person commits a Class I offense if he/she confers or offers or agrees to confer any benefit the acceptance of which would be an offense under subsection (1) or (2) of this Section. [TCR 86-79]

3-335 Fraudulent use of a credit card; penalty.

1. It shall be unlawful to use a credit card for the purpose of obtaining property or services with knowledge that:
   A. The card is stolen; or
   B. The card has been revoked or canceled; or
   C. For any other reason his/her use of the credit card is unauthorized by either the issuer or the person to whom the card has been issued.
2. Fraudulent use of a credit card is a Class I offense. Restitution shall be required. [TCR 86-79]

3-336 Deceptive business practices; penalty.

1. It shall be unlawful, in the course of business, to intentionally:
   A. Use or possess for use a false weight or measure, or any other device for falsely determining or recording any quality or quantity; or
   B. Sell, offer, or expose for resale, or deliver less than the represented quality or quantity of any commodity or service; or
   C. Take or attempt to take more than the represented quantity of any commodity or service when as buyer he/she furnishes the weight or measure; or
   D. Sell, offer or expose for sale adulterated or mislabeled commodities:
      i. "Adulterated" means varying from the standard of composition or quality prescribed by law or commercial usage;
      ii. "Mislabeled" means varying from the standard of truth of disclosure in labeling prescribed by law or commercial usage; or
   E. Make a substantial false or misleading statement in any advertisement addressed to the public or a substantial segment thereof for the purpose of promoting the purchase or sale of property or services; or
   F. Make a false or misleading statement for the purpose of obtaining property or credit; or
   G. Make a false or misleading written statement for the purpose of promoting the sales of securities, or omit information required by law to be disclosed in written documents relating to securities.
2. Deceptive business practices is a Class II offense.
3. It is an affirmative defense that the defendants conduct was not knowingly or recklessly deceptive. [TCR 86-79]

3-337 Defrauding creditors; penalty.

1. It shall be unlawful to:
   A. Destroy, remove, conceal, encumber, transfer, or otherwise deal with property subject to a security interest with the intent to hinder enforcement of that interest; or
   B. Deal with property with the intent to defeat or obstruct the operation of any law relating to administration of property for the benefit of creditors; or knowingly falsify any writing or record relating to the property; knowingly misrepresent or refuse to disclose to a person entitled to administer property for the benefit of creditors, the existence, amount or location of the property or any other information which the actor could be legally required to furnish in relation to such administration.
2. Defrauding creditors is a Class II offense. [TCR 86-79]

3-338 Securing execution of documents by deception; penalty.

1. It shall be unlawful to intentionally, and by deception, cause another to execute any instrument affecting or likely to affect the pecuniary interest of another.
2. Securing execution of documents by deception is a Class II offense. [TCR 86-79]

3-339 Criminal usury; penalty.

1. It shall be unlawful to intentionally provide financing or make loans at a rate of interest higher than the following:
   A. If the amount to which the interest applies is less than one hundred dollars ($100.00) or the period of the loan for financing is less than one year, or both, the rate of interest shall not exceed a twenty four percent per annum simple interest rate.
   B. If the amount to which the interest applies is greater than one hundred dollars ($100.00) or the period of the loan for financing is greater than one year, or both, the rate of interest shall not exceed an eighteen percent per annum simple interest rate.
2. Criminal usury is a Class II offense. The victim shall be entitled to restitution for double the actual amount of interest which was actually paid and cancellation of all interest owing for the term of the financing. [TCR 86-79]

3-340 Unlawful dealing with property by a fiduciary; penalty.

1. It shall be unlawful to knowingly deal with property that has been entrusted to one in a fiduciary capacity, or property of the Tribe, of government or of a financial institution, in a manner which he/she knows is a violation of his/her fiduciary duty, or which involves a substantial risk of loss to the owner or to a person for whose benefit the property was entrusted.
2. As used in this Section, "fiduciary" includes a trustee, guardian, executor, administrator, receiver or any person carrying on fiduciary functions on behalf of a corporation or other organization which is a fiduciary.
3. Unlawful dealing with property by a fiduciary is a Class I offense. [TCR 86-79]

3-341 Making a **false credit report; penalty.**

1. It shall be unlawful to knowingly make a materially false or misleading statement to obtain property or credit for oneself or another or to keep some other person from obtaining credit.
2. Making a false credit report is a Class II offense. [TCR 86-79]

3-342 Computers; terms defined. For purposes of Sections 3-342 to 3-346, unless the context otherwise requires:

1. "Access" shall mean to instruct, communicate with, store data in, retrieve data frame, or otherwise use the resources of a computer or computer network;
2. "Computer" shall mean a high-speed data processing device or system which performs logical arithmetic data storage and retrieval, communication, or control functions and includes any input, output, data storage processing, or communication facilities directly related to or operating in conjunction with any such device or system;
3. "Computer networks" shall mean the interconnection of communication links with a computer or an interconnection of computers which communicate with each other;

4. "Computer programs" shall mean a set of instructions, statements, or related data that directs or is intended to direct the computer to perform certain specified functions;
5. "Data" shall mean a representation of information, facts, knowledge, concepts, or instructions prepared in formalized or other manner and intended for use in a computer or computer network;
6. "Property" shall mean any tangible or intangible thing of value and shall include, but not be limited to, financial instruments, data, computer programs, information, computer-produced or stored data, supporting documentation, or data in transit, whether in human or computer readable form; and
7. "Service" shall mean use of a computer or computer network including but not limited to data processing and storage function, computer programs, or data. [TCR 86-79]

3-343 Depriving or obtaining property or services; penalty. Any person who intentionally accesses or causes to be accessed, directly or indirectly, any computer or computer network without authorization or who, having accessed any computer or computer network with authorization, knowingly and intentionally exceeds the limits of such authorization shall be guilty of a Class I offense if he/she intentionally:
1. Deprives another of property or services; or
2. Obtains property or services of another. [TCR 86-79]

3-344 Unlawful acts; harming or disrupting operations; penalties. Any person who accesses or causes to be accessed any computer or computer network without authorization or who, having accessed any computer or computer network with authorization, knowingly and intentionally exceeds the limits of such authorization shall be guilty of a Class I offense if he/she intentionally:
1. Alters, damages, deletes, or destroys any computer, computer network, computer program, data, or other property; or
2. Disrupts the operations of any computer or computer network. [TCR 86-79]

3-345 Unlawful acts; obtaining confidential public information; penalties. Any person who intentionally accesses or causes to be accessed any computer or computer network without authorization, knowingly and intentionally exceeds the limits of such authorization, and thereby obtains information filed by the public with the Tribe or any department or committee of the Tribe which is required by statute or ordinance to be kept confidential shall be guilty of a Class II offense. For any second or subsequent offense under this Section, such person shall be guilty of a Class I offense. [TCR 86-79, 93-84]

3-346 Unlawful acts; access without authorization; exceeding authorization; penalties. Any person who intentionally accesses any computer, computer program or data without authorization and with knowledge that such access was not authorized or who, having accessed any computer or computer network with authorization, knowingly or intentionally exceeds the limits of such authorization shall be guilty of a Class II offense. For any second or subsequent offense under this Section, such person shall be guilty of a Class I offense. [TCR 86-79, 89-87]

TITLE 3
ARTICLE 4
CRIMES AGAINST THE PERSON

3-401 Compounding a criminal offense, defined; penalty.
3-402 Homicide; terms defined.
3-403 Murder in the first degree; penalty.
3-404 Murder in the second degree; penalty.
3-405 Manslaughter; penalty.
3-406 Motor vehicle homicide; penalty.
3-407 Assisting suicide, defined; penalty.
3-408 Assault in the first degree; penalty.
3-409 Assault in the second degree; penalty.
3-409.5 Simple assault; penalty.
3-410 Terroristic threats; penalty.
3-411 Restrain, abduct; defined.
3-412 Kidnapping; penalty.
3-413 False imprisonment in the first degree; penalty.
3-414 False imprisonment in the second degree; penalty.
3-415 Violation of custody; penalties.
3-416 Sexual assault; legislative intent.
3-417 Sexual assault; terms defined.
3-418 Sexual assault; first degree; penalty.
3-419 Sexual assault; second degree; penalty.
3-420 Sexual assault; in camera hearing.
3-421 Sexual assault; evidence of past sexual behavior; when admissible; procedure.
3-422 Sexual assault; evidence against another person; when admissible.
3-423 Confined person; offenses against another person; penalty; sentence.
3-424 Robbery; penalty.

3-401 Compounding a criminal offense, defined; penalty.

1. A person is guilty of compounding a criminal offense if he/she accepts or agrees to accept any pecuniary benefit or other reward or promise thereof, as consideration for:
   A. Refraining from seeking prosecution of an offender; or
   B. Refraining from reporting to law enforcement authorities the commission of any criminal offense or information relating to a criminal offense.
2. It is an affirmative defense to prosecution under this Section that the benefit received by the defendant did not exceed an amount which the defendant reasonably believed to be due him/her as restitution for harm caused by the crime.
3. Compounding a criminal offense is a Class II offense. [TCR 86-79]

3-402 Homicide; terms defined. As used in Sections 3-402 to 3-406 unless the context otherwise requires:

1. Homicide shall mean the killing of a person by another.
2. Person, when referring to the victim of a homicide, shall mean a human being who had been born and was alive at the time of the homicidal act; and
3. Premeditation shall mean a design formed to do something before it is done. [TCR 86-79]

3-403 Murder in the first degree; penalty. A person commits murder in the first degree if he/she kills another person:

1. Purposely and with deliberate and premeditated malice; or
2. In the perpetration of or attempt to perpetrate any sexual assault in the first degree, arson, robbery, kidnapping, hijacking of any public or private means of transportation, or burglary; or

3. By administering poison or causing the same to be done; or if by willful and corrupt perjury or subornation of the same he/she purposely procures the conviction and execution of any innocent person.
4. Murder in the first degree is a Class I offense. [TCR 86-79]

3-404 Murder in the second degree; penalty.

1. A person commits murder in the second degree if he/she causes the death of a person intentionally, but without premeditation.
2. Murder in the second degree is a Class I offense. [TCR 86-79]

3-405 Manslaughter; penalty.

1. A person commits manslaughter if he/she kills another without malice, either upon a sudden quarrel, or causes the death of another unintentionally while in the commission of an unlawful act.
2. Manslaughter is a Class I offense. [TCR 86-79]

3-406 Motor vehicle homicide; penalty.

1. A person who causes the death of another unintentionally while engaged in the operation of a motor vehicle in violation of a Tribal law or in violation of any federal law commits the offense of motor vehicle homicide.
2. A person is guilty of motor vehicle homicide if, while under the influence of an alcoholic beverage, intoxicating liquor, a controlled substance, or any drug, to a degree which renders the person incapable of safely driving a vehicle, he/she causes the death of another by operating a motor vehicle in a reckless, negligent, or careless manner.
3. The presumptions established in the Nebraska Code regarding blood alcohol content are adopted by reference and shall be applicable to this Section. Any chemical test administered to a defendant shall be admissible in accordance with the rules of evidence.
4. Any person who operates or has in his/her actual physical control a motor vehicle upon a public highway on this reservation shall be deemed to have given his/her consent to submit to a chemical test of his/her blood, urine, or breath, for the purpose of determining the amount of alcohol content in his/her body fluid.
5. For purposes of this Section, a motor vehicle is any self-propelled vehicle and includes, but is not limited to, any automobile, truck, van, motorcycle, train, engine, water craft, aircraft or snowmobile.
6. Motor vehicle homicide is a Class I offense. [TCR 86-79, 95-27]

3-407 Assisting suicide, defined; penalty.

1. A person commits assisting suicide when, with intent to assist another person in committing suicide, he/she aids and abets him/her in committing or attempting to commit suicide.
2. Assisting suicide is a Class I offense. [TCR 86-79]

3-408 Assault in the first degree; penalty.

1. A person commits the offense of assault in the first degree if he/she:
   A. Intentionally or knowingly causes serious bodily injury to another person; or

B. Intentionally or knowingly causes bodily injury to another person with a dangerous instrument.

2. Assault in the first degree is a Class I offense. [TCR 86-79]

3-409 Assault in the second degree; penalty.

1. A person commits the offense of assault in the second degree if he/she:
   A. Recklessly causes bodily injury to another; or with a dangerous instrument; or
   B. Recklessly causes serious bodily injury to another person;
   C. While during confinement or in legal custody of the Tribal or Bureau of Indian Affairs police or in any jail, unlawfully strikes or wounds another.
2. Assault in the second degree is a Class II offense. [TCR 86-79, 89-87]

3-409.5 Simple assault; penalty.

1. A person commits the offense of simple assault if he/she:
   A. Recklessly attempts to cause bodily injury to another, whether or not such injury results; or
   B. Threatens another in a menacing manner.
2. Simple assault is a Class III offense. [TCR 86-79, 89-87]

3-410 Terroristic threats; penalty.

1. A person commits terroristic threats if:
   A. He/she threatens to commit any crime likely to result in death or serious physical injury to another person or likely to result in substantial property damage to another person; or
   B. He/she intentionally makes false statements with the intent of causing the evacuation of a building, place of assembly, or facility of public transportation.
2. Terroristic threats are a Class I offense. [TCR 86-79]

3-411 Restrain, abduct; defined. As used in Sections 3-411 to 3-414, unless the context otherwise requires:

1. Restrain shall mean to restrict a person's movement in such a manner as to interfere substantially with his/her liberty:
   A. By means of force, threat, or deception; or
   B. If the person is under the age of eighteen years or incompetent, without the consent of the relative, person or institution having lawful custody of him/her.
2. Abduct shall mean to restrain a person with intent to prevent his/her liberation by:
   A. Secreting or holding him/her in a place where he/she is not likely to be found; or
   B. Endangering or threatening to endanger the safety of any human being. [TCR 86-79]

3-412 Kidnapping; penalty.

1. A person commits kidnapping if he/she abducts another or, having abducted another, continues to restrain him/her with intent to do the following:
   A. Hold him/her for ransom or reward; or
   B. Use him/her as a shield or hostage; or
   C. Terrorize him/her or a third person; or

D. To facilitate commission of any offense or flight thereafter; or
E. Interfere with the performance of any government or political function.

2. Kidnapping is a Class I offense. [TCR 86-79}

3-413 False imprisonment in the first degree; penalty.

1. A person commits false imprisonment in the first degree if he/she knowingly restrains or abducts another person:
   A. Under terrorizing circumstances or under circumstances which expose the person to the risk of serious bodily injury; or
   B. With intent to hold him/her in condition of involuntary servitude.
2. This Section does not apply to protective custody as authorized under Section 3-712.
3. False imprisonment in the first degree is a Class I offense. [TCR 86-79]

3-414 False imprisonment in the second degree; penalty.

1. A person commits false imprisonment in the second degree if he/she knowingly restrains another person without legal authority.
2. In any prosecution under this Section, it shall be an affirmative defense that the person restrained:
   A. Was on or in the immediate vicinity of the premises of a retail mercantile establishment and he/she was restrained for the purpose of investigation or questioning as to the ownership of any merchandise; and
   B. Was restrained in a reasonable manner and for not more than a reasonable time; and
   C. Was restrained to permit such investigation or questioning by a police officer, or by the owner of the mercantile establishment, his/her authorized employee or agent; and
   D. That such police officer, owner, employee or agent had reasonable grounds to believe that the person so detained was committing or attempting to commit theft of merchandise on the premises; provided, nothing in this Section shall prohibit or restrict any person restrained pursuant to this Section from maintaining any applicable civil remedy if no theft has occurred.
3. This Section does not apply to protective custody as authorized under Section 3-712.
4. False imprisonment in the second degree is a Class III offense. [TCR 86-79, 89-87]

3-415 Violation of custody; penalties.

1. Any person, including a natural or foster parent, who, knowing that he/she has no legal right to do so or, heedless in that regard, takes or entices any child under the age of eighteen years from the custody of its parent having legal custody, guardian, or other lawful custodian commits the offense of violation of custody.
2. Violation of custody is a Class III offense for a first offense. For all subsequent offenses violation of custody shall be a Class II offense. [TCR 86-79, 89-87]

3-416 Sexual assault; legislative intent. It is the intent of the Winnebago Tribe of Nebraska to enact laws dealing with sexual assault and related criminal sexual offenses which will protect the dignity of the victim at all stages of judicial process, which will insure that the alleged offender in a criminal sexual offense case have preserved the constitutionally guaranteed due process of law procedures, and which will establish a system of investigation, prosecution, punishment, and rehabilitation for the welfare and benefit of the residents of this reservation as such system is employed in the area of criminal sexual offenses. [TCR 86-79]

3-417 Sexual assault; terms defined. As used in Sections 3-416 to 3-422, unless the context otherwise requires:

1. "Actor" shall mean a person accused of sexual assault;
2. "Intimate parts" shall mean the genital area, groin, inner thighs, buttocks, or breasts;
3. "Past sexual behavior" shall mean sexual behavior other than the sexual behavior upon which the sexual assault is alleged;
4. "Serious personal injury" shall mean great bodily injury or disfigurement, extreme mental anguish or mental trauma, pregnancy, disease, or loss or impairment of a sexual or reproductive organ;
5. "Sexual contact" shall mean the intentional touching of the victim's sexual or intimate parts or the intentional touching of the victim's clothing covering the immediate area of the victim's sexual or intimate parts. Sexual contact shall also mean the touching by the victim of the actor's sexual or intimate parts or the clothing covering the immediate area of the actor's sexual or intimate parts when such touching is intentionally caused by the actor. Sexual contact shall include only such conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification of either party;
6. "Sexual penetration" shall mean sexual intercourse in its ordinary meaning, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the actor's or victim's body or any object manipulated by the actor into the genital or anal openings of the victims body which can be reasonably construed as being for non-medical or non-health purposes. Sexual penetration shall not require emission of semen; and
7. Victim shall mean the person alleging to have been sexually assaulted. [TCR 86-79]

3-418 Sexual assault; first degree; penalty.

1. Any person who subjects another person to sexual penetration; and
   A. Overcomes the victim by force, threat of force, express or implied, coercion, or deception;
   B. Knew or should have known that the victim was mentally or physically incapable of resisting or appraising the nature of his/her conduct; or
   C. The actor is eighteen years of age or older and the victim is less than eighteen years of age is guilty of sexual assault in the first degree.
2. Sexual assault in the first degree is a Class I offense. The sentencing judge shall consider whether the actor shall have caused serious personal injury to the victim in reaching his/her decision on the sentence. [TCR 86-79, 89-87]

3-419 Sexual assault; second degree; penalty.

1. Any person who subjects another person to sexual contact; and
   A. Overcomes the victim by force, threat of force, express or implied, coercion, or deception; or
   B. Knew or should have known that the victim was physically or mentally incapable of resisting or appraising the nature of his/her conduct is guilty of sexual assault in the second degree; or
   C. Any person who subjects an unemancipated minor to sexual penetration is guilty of sexual assault in the second degree.
2. Sexual assault in the second degree is a Class II offense. [TCR 86-79, 89-87]

3-420 Sexual assault; in camera hearing. Upon motion to the court by either party in a prosecution in a case of sexual assault, an in camera hearing shall be conducted in the presence of the judge, under guidelines established by the judge, to determine the relevance of evidence of the victim's or the defendant's past sexual conduct. [TCR 86-79]

3-421 Sexual assault; evidence of past sexual behavior; when admissible; procedure.

1. If the defendant intends to offer evidence of specific instances of the victim's past sexual behavior, notice of such intention shall be given to the Tribal prosecutor and filed with the Court not later than fifteen days before trial.
2. Upon motion to the Court by either party in a prosecution in a case of sexual assault, an in camera hearing shall be conducted under guidelines established by the Winnebago Rules of Evidence, Rule 1A-412, to determine the relevance of evidence of the victim's or the defendant's past sexual behavior. Evidence of a victim's past sexual behavior shall not be admissible unless such evidence is:
   A. Evidence of past sexual behavior with persons other than the defendant, offered by the defendant upon the issue of whether the defendant was or was not, with respect to the victim, the source of any physical evidence, including but not limited to, semen, injury, blood, saliva, and hair; or
   B. Evidence of past sexual behavior with the defendant when such evidence is offered by the defendant on the issue of whether the victim consented to the sexual behavior upon which the sexual assault is alleged if it is first established to the Court that such activity shows such a relation to the conduct involved in the case and tends to establish a pattern of conduct or behavior on the part of the victim as to be relevant to the issue of consent. [TCR 86-79, 93-85]

3-422 Sexual assault; evidence against another person; when admissible. Specific instances of prior sexual activity between the victim and any person other than the defendant shall not be admitted into evidence in prosecution under the Tribal Criminal Code unless consent by the victim is at issue, when such evidence may be admitted if it is first established to the Court at an in-camera hearing conducted under guidelines established by Winnebago Rules of Evidence, Rule 1A-412 that such activity shows such a relation to the conduct involved in the case and tends to establish a pattern of conduct or behavior on the part of the victim as to be relevant to the issue of consent. [TCR 86-79, 93-85]

3-423 Confined person; offenses against another person; penalty; sentence.

1. Any person who is legally confined in a jail and who commits:
   A. Assault in the first or second degree, as defined in Sections 3-408 to 3-409;
   B. Terroristic threats as defined in Section 3-410;
   C. Kidnapping as defined in Section 3-412; or
   D. False imprisonment in the first or second degree as defined in Sections 3-413 to 3-414, against any person for the purpose of compelling or inducing the performance of any act by such person or any other person shall be guilty of a Class I offense.
2. Sentences imposed under subsection (1) of this Section shall be served consecutive to any sentence or sentences imposed for violations committed prior to the violation of subsection (1) of this Section and shall not include any credit for time spent in custody prior to sentencing unless the time in custody is solely related to the offense for which the sentence is being imposed under this Section. [TCR 86-79]

3-424 Robbery; penalty.

1. A person commits robbery if, with the intent to steal, he/she forcibly or by violence, or by putting in fear takes from the person of another any money or personal property of any value whatsoever.
2. Robbery is a Class I offense. [TCR 86-79]

TITLE 3
ARTICLE 5
INCHOATE CRIMES

3-501 Criminal attempt; conduct; penalty.
3-502 Conspiracy, defined; penalty.
3-503 Conspiracy; renunciation of criminal intent.
3-504 Accessory to crime; defined; penalty.
3-505 Aiding consummation of crime; penalty.
3-506 Prosecuting for aiding and abetting.

3-501 Criminal attempt; conduct; penalty.

1. A person shall be guilty of an attempt to commit a crime if he/she:
   A. Intentionally engages in conduct which would constitute the crime if the attendant circumstances were as he/she believes them to be; or
   B. Intentionally engages in conduct which, under the circumstances as he/she believes them to be, constitutes a substantial step in a course of conduct intended to culminate in his/her commission of the crime.
2. When causing a particular result is an element of the crime, a person shall be guilty of an attempt to commit the crime if, acting with the state of mind required to establish liability with respect to the attendant circumstances specified in the definition of the crime, he/she intentionally engages in conduct which is a substantial step in a course of conduct intended or known to cause such a result.
3. Conduct shall not be considered a substantial step under this Section unless it is strongly corroborative of the defendants criminal intent.
4. Criminal attempt is:
   A. A Class I offense when the crime attempted is a Class I offense.
   B. A Class II offense when the crime attempted is a Class II offense.
   C. A Class III offense when the crime attempted is a Class III offense. [TCR 86-79]

3-502 Conspiracy, defined; penalty.

1. A person shall be guilty of criminal conspiracy if, with intent to promote or facilitate the commission of a criminal offense:
   A. He/she agrees with one or more persons that they or one or more of them shall engage in the conduct or shall cause the result specified by the definition of the offense; and
   B. He/she or another person with whom he/she conspired commits an overt act in pursuance of the conspiracy.
2. If a person knows that one with whom he/she conspires to commit a crime has conspired with another person or persons to commit the same crime, he/she is guilty of conspiring to commit such crime with such other person or persons whether or not he/she knows their identity.
3. If a person conspires to commit a number of crimes, he/she is guilty of only one conspiracy so long as such multiple crimes are the object of the same agreement or continuous conspiratorial relationship.
4. Conspiracy is a crime of the same class as the most serious offense which is an object of the conspiracy. A person prosecuted for a criminal conspiracy shall be acquitted if such person proves by a preponderance of the evidence that his/her conduct occurred in response to an entrapment. [TCR 86-79]

3-503 Conspiracy; renunciation of criminal intent. In a prosecution for criminal conspiracy, it shall be an affirmative defense that the defendant, under circumstances manifesting a voluntary and complete renunciation of his/her criminal intent, gave timely warning to law enforcement authorities or otherwise made a reasonable effort to prevent the conduct or result which is the object of the conspiracy. [TCR 86-79]

3-504 Accessory to crime; defined; penalty.

1. A person is guilty of being an accessory to crime if with intent to interfere with, hinder, delay, or prevent the discovery, apprehension, prosecution, conviction, or punishment, of another for an offense, he/she:
   A. Harbors or conceals the other; or
   B. Provides or aids in providing a weapon, transportation, disguise, or other means of effecting escape or avoiding discovery or apprehension; or
   C. Conceals or destroys evidence of the crime or tampers with a witness, informant, document, or other source of information, regardless of its admissibility in evidence; or
   D. Warns the other of impending discovery or apprehension other than in connection with an effort to bring another into compliance with the law; or
   E. Volunteers false information to a peace officer; or
   F. By force, intimidation, or deception, obstructs anyone in the performance of any act which might aid in the discovery, detection, apprehension, prosecution, conviction, or punishment of such person.
2. Accessory to crime is a crime of the same class as the most serious offense to which the accused served as an accessory. [TCR 86-79, 89-87]

3-505 Aiding consummation of crime; penalty.

1. A person is guilty of aiding consummation of crime if he/she intentionally aids another to secrete, disguise, or convert the proceeds of a criminal offense or otherwise profit from a crime.
2. Aiding consummation of crime is a crime of the same class as the most serious offense to which the accused aided in the consummation. [TCR 86-79, 89-87]

3-506 Prosecuting for aiding and abetting. A person who aids, abets, procures, or causes another to commit any offense may be prosecuted and punished as if he were the principal offender. [TCR 86-79]

TITLE 3
ARTICLE 6
CRIMES AGAINST PUBLIC JUSTICE

3-601 Obstructing government operations; penalty.
3-602 Failure to report injury of violence; physician or surgeon; emergency room or first aid station attendants; penalty.
3-603 Refusing to aid a peace officer; penalty.
3-604 Resisting arrest; penalty; affirmative defense.
3-605 Consumption of liquor on public property, public roads, streets, alleys, forbidden; penalty.
3-606 Obstructing a peace officer; penalty.
3-607 False reporting; penalty.
3-608 Interfering with a fireman on official duty; penalty; fireman, defined.
3-609 Abuse of public record; penalty; public record, defined.
3-610 Escape; official detention, defined; knowingly permitting escape; penalty; defense to prosecution.
3-611 Providing contraband; penalty.
3-612 Loitering about jail; penalty.
3-613 Assault on an officer in the first degree; penalty.
3-614 Assault on an officer in the second degree; penalty.
3-615 Repealed.
3-616 Perjury; subornation of perjury; penalty.
3-617 Juror, testimony and official proceedings; defined.
3-618 Bribery; penalty.
3-619 Bribery of a witness; penalty; witness receiving bribe; penalty.
3-620 Bribery of a juror; penalty; juror receiving bribe; penalty.
3-621 Tampering with witnesses, informants, or jurors; penalty.
3-622 Jury tampering; penalty.
3-623 Tampering with physical evidence; penalty; physical evidence, defined.
3-624 Simulating legal process; penalty.
3-625 Employee; penalized due to jury service; prohibited; penalty.
3-626 Impersonating a peace officer.
3-627 Impersonating a public servant.
3-628 Official misconduct; penalty.
3-629 Oppression under color of office; penalty.
3-630 Misusing public money.
3-631 Improper influence in official matters.
3-632 Retaliation for past official action.
3-633 Improper gifts to public servants.
3-634 Special influence.
3-635 Doing business without a license.
3-636 Tampering with public property.
3-637 Injuring public property.
3-638 Bail jumping.
3-639 Failure to obey a lawful order of the Court.
3-640 Repealed.
3-641 Neglecting to serve a warrant; penalty; forfeiture of office.
3-642 Mutilating a flag; penalty; flag, defined.
3-643 Illegal solicitation.
3-644 Repealed.
3-645 Failure to appear; penalty.
3-646 Sell or exchange of property for promise to vote prohibited.

3-601 Obstructing government operations; penalty.

1. A person commits the offense of obstructing government operations if he/she intentionally obstructs, impairs, or perverts the administration of law or other governmental functions by force, violence, physical interference or obstacle, breach of official duty, or any other unlawful act, except that this Section does not apply to flight by a person charged with crime, refusal to submit to arrest, failure to perform a legal duty other than an official duty, or any other means of avoiding compliance with law without affirmative interference with governmental functions.
2. Obstructing governmental operations is a Class III offense. [TCR 86-79]

3-602 Failure to report injury of violence; physician or surgeon; emergency room or first aid station attendants; penalty.

1. Every person engaged in the practice of medicine and surgery, or who is in charge of any emergency room or first aid station on this reservation, shall report every case, in which he/she is consulted for treatment or treats a wound or injury of violence which appears to have been received in connection with the commission of a criminal offense, immediately to the chief of police of the Winnebago Tribe or of the Bureau of Indian Affairs. Such report shall include the name of such person, the residence, if ascertainable, and a brief description of the injury. Any provision of law or rule of evidence relative to confidential communications is suspended insofar as the provisions of this Section are concerned.
2. Any person who fails to make the report required by this Section commits an infraction. [TCR 86-79, 89-87]

3-603 Refusing to aid a peace officer; penalty.

1. A person commits the offense of refusing to aid a peace officer if, upon request by a person known to him/her to be a peace officer, he/she unreasonably refuses or fails to aid such peace officer in:
   A. Apprehending any person charged with or convicted of any offense against any of the laws of the Tribe or of the United States; or
   B. Securing such offender when apprehended; or
   C. Conveying such offender to the Tribal jail.
2. Refusing to aid a peace officer is a Class III offense. [TCR 86-79, 89-87]

3-604 Resisting arrest; penalty; affirmative defense.

1. A person commits the offense of resisting arrest if, a peace officer, acting under color of his/her official authority, from effecting an arrest of the actor or another, he/she:
   A. Uses or threatens to use physical force or violence against the peace officer or another; or
   B. Uses any other means which creates a substantial risk of causing physical injury to the peace officer or another; or
   C. Employs means requiring substantial force to overcome resistance to effecting the arrest.
2. It is an affirmative defense to prosecution under this Section if the peace officer involved was out of uniform and did not identify him/herself as a peace officer by showing his/her credentials to the person whose arrest is attempted.
3. Resisting arrest is a Class II offense. [TCR 86-79]

3-605 Consumption of liquor on public property, public roads, streets, alleys; forbidden; penalty.

1. It shall be unlawful for any person to consume alcoholic liquors in the public streets, alleys, parking areas, roads, or highways, or inside vehicles; or upon property owned by the Winnebago Tribe of Nebraska, the state or the United States unless authorized by the governing bodies having jurisdiction over such properties.
2. It shall be unlawful for any person to have in his/her possession or actual control (including possession within the interior of any motor vehicle) any alcohol liquor in an open, unsealed, uncovered, agape, or ajar container of whatever form in or on the public streets, alleys, parking areas, roads, or highways, or inside vehicles; or upon property owned by the Winnebago Tribe of Nebraska, the state or the United States unless authorized by the governing bodies having jurisdiction over such properties.

3. Consumption of liquor on public property, both sections (1) and (2), is an infraction. [TCR 86-79, 89-87, 89-139]

3-606 Obstructing a **peace officer; penalty.**

1. A person commits the offense of obstructing a peace officer, when, by using or threatening to use violence, force, physical interference, or obstacle, he/she intentionally obstructs, impairs, or hinders the enforcement of the penal law or the preservation of the peace by a peace officer or judge acting under color of his official authority.
2. Obstructing a peace officer is a Class II offense. [TCR 86-79, 89-87]

3-607 False reporting; penalty.

1. A person commits the offense of false reporting if he/she:
   A. Furnishes information he/she knows to be false to any peace officer or other official with the intent to instigate an investigation of an alleged criminal matter or to impede the investigation of an actual criminal matter; or
   B. Furnishes information he/she knows to be false alleging the existence of any emergency to which human life or property are in jeopardy to any hospital, ambulance company, or other person or governmental agency which deals with emergencies involving danger to life or property, including the Winnebago Fire Protection District; or
   C. Furnishes any information he/she knows to be false concerning the location of any explosive in any building or other property to any person.
2. False reporting is a Class I offense. [TCR 86-79]

3-608 Interfering with a fireman on official duty; penalty; fireman, defined.

1. A person commits the offense of interfering with a fireman if at any time and place where any fireman is discharging or attempting to discharge any official duties, he/she willfully:
   A. Resists or interferes with the lawful efforts of any fireman in the discharge or attempt to discharge an official duty; or
   B. Disobeys the lawful orders given by any fireman while performing his/her duties; or
   C. Engages in any disorderly conduct which delays or prevents a fire from being extinguished within a reasonable time; or
   D. Forbids or prevents others from assisting or extinguishing a fire or exhorts another person, as to when he/she has no legal right or obligation to protect or control, not to assist in extinguishing a fire.
2. As used in this Section, fireman shall mean any person who is an officer, employee, or member of a fire department or fire protection or firefighting agency of the federal government, the Tribal government, the State of Nebraska, or the State of Iowa whether such person is a volunteer or partly-paid or fully-paid, while he/she is actually engaged in firefighting, fire supervision, fire suppression, fire prevention, or fire investigation.
3. Interfering with a fireman on official duty is a Class II offense. [TCR 86-79, 89-87]

3-609 Abuse of public record; penalty; public record, defined.

1. A person commits abuse of public record, if:
   A. He/she knowingly makes a false entry in or falsely alters any public record; or

B. Knowing he/she lacks the authority to do so, he/she intentionally destroys, mutilates, conceals, removes, or impairs the availability of any public record; or

C. Knowing he/she lacks the authority to retain the record, he/she refuses to deliver up a public record in his/her possession upon proper request of any person lawfully entitled to receive such record; or

D. He/she makes, presents, or uses any record, document, or thing, knowing it to be false, and with the intention that it be taken as a genuine part of the public record.

2. As used in this Section, the term public record includes all official books, papers, or records created, received, or used by or in any governmental office or agency.

3. Abuse of public record is a Class II offense. [TCR 86-79]

3-610 Escape; official detention, defined; knowingly permitting an escape; penalty; defense to prosecution.

1. A person commits escape if he/she unlawfully removes him/herself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited period. Official detention shall mean arrest, detention in or transportation to any facility for custody of persons under charge or conviction of crime or contempt or for persons alleged or found to be delinquent, detention for extradition or deportation, or any other detention for law enforcement purposes; but official detention does not include supervision of probation or parole or constraint incidental to release on bail.

2. Escape is a Class I offense.

3. A public servant concerned in detention commits an offense if he/she knowingly permits an escape. Any person who knowingly causes or facilitates an escape commits a Class I offense. [TCR 86-79]

3-611 Providing contraband; penalty.

1. A person commits an offense if he/she unlawfully introduces within a detention facility, or unlawfully provides an inmate with alcoholic beverage, drugs, weapon, tool, or other thing which may be useful for escape. An inmate commits an offense if he/she unlawfully procures, makes, or otherwise provides him/herself with, or has in his/her possession, any such item or implement of escape. Unlawfully means surreptitiously or contrary to law, regulation, or order, of the detaining authority.

2. Providing contraband is a Class II offense. [TCR 86-79]

3-612 Loitering about jail; penalty.

1. Any person who loiters about any jail on this reservation and engages in an unauthorized conversation with or passes any unauthorized message or messages to any inmate of such jail, or fails or refuses to leave the immediate vicinity of any jail when ordered to do so by any peace officer, commits the offense of loitering about jail.

2. Loitering about the jail shall be an infraction. [TCR 86-79, 89-87]

3-613 Assault on an officer in the first degree; penalty.

1. A person commits the offense of assault on an officer in the first degree if he/she intentionally or knowingly causes serious bodily injury to a peace officer or employee of the Winnebago Tribe of

Nebraska or of the Bureau of Indian Affairs or of the state while such officer or employee is engaged in the performance of his/her official duties.

2. Assault on an officer in the first degree is a Class I offense. [TCR 86-79]

3-614 Assault on an officer in the second degree; penalty.

1. A person commits the offense of assault on an officer in the second degree if he/she:
   A. Intentionally or knowingly causes bodily injury to a peace officer or employee of the Winnebago Tribe of Nebraska, of the Bureau of Indian Affairs, or of the state, while such officer or employee is engaged in the performance of his/her official duties; or
   B. Recklessly causes bodily injury to a peace officer or employee of the Winnebago Tribe of Nebraska, or the Bureau of Indian Affairs or of the state, while such officer or employee is engaged in the performance of his/her official duties.
2. Assault on an officer in the second degree is a Class II offense. [TCR 86-79, 03-193]

3-615 Repealed. [TCR 86-79, 89-87]

3-616 Perjury; subornation of perjury; penalty.

1. A person commits perjury if, having given his/her oath or affirmation in any judicial proceeding or to any affidavit on undertakings, bonds, or recognizances or in any other matter where an oath or affirmation is required by law, he/she disposes, affirms or declares any matter to be fact, knowing the same to be false, or denies any matter to be fact, knowing the same to be true.
2. A person commits subornation of perjury if he/she persuades, procures or suborns any other person to commit perjury.
3. Perjury is a Class I offense. [TCR 86-79]

3-617 Juror, testimony and official proceedings; defined. As used in Sections 3-617 to 3-624 unless the content otherwise requires:

1. Juror shall mean any person who is a member of any jury impaneled by the Court of the Winnebago Tribe of Nebraska or by any public servant authorized by law to impanel a jury. The word juror also includes any person who has been drawn or summoned to attend as a prospective juror;
2. Testimony shall mean oral or written statements, documents, or any other evidence that may be offered by or through a witness in an official proceeding; and
3. Official proceeding shall mean a proceeding heard or which may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with any such proceeding. [TCR 86-79]

3-618 Bribery; penalty.

1. A person commits bribery if:
   A. He/she offers, confers, or agrees to confer any benefit upon a public servant or peace officer with the intent to influence that public servant or peace officer to violate his/her public duty, or oath of office, thereby influencing the public servant's or peace officer's vote, opinion, judgment, exercise of discretion, or other action or inaction in his/her official capacity; or

B. While a public servant or peace officer**,** he/she solicits, accepts, or agrees to accept any benefit upon an agreement or understanding that he/she will violate his/her public duty or oath of office by changing or amending his/her vote, opinion, judgment, exercise of discretion, or other action or inaction as a public servant or peace officer.

2. It is no defense to prosecution under this Section that the person sought to be influenced was not qualified to act in the desired way, whether because he/she had not yet assumed office, lacked jurisdiction, or for any other reason.
3. Bribery is a Class I offense. [TCR 86-79]

3-619 Bribery of a **witness; penalty; witness receiving bribe; penalty.**

1. A person commits bribery of a witness if he/she offers, confers, or agrees to confer any benefit upon a witness or a person he/she believes is about to be called as a witness in any official proceeding with intent to:
   A. Influence him/her to testify falsely or unlawfully withhold any testimony; or
   B. Induce him/her to avoid legal process summoning him/her to testify; or
   C. Induce him/her to absent him/herself from an official proceeding to which he/she has been legally summoned. Bribery of a witness is a Class I offense.
2. A person who is a witness or has been called as a witness in any official proceeding commits a Class I offense if he/she accepts or agrees to accept any benefit from any other person for the purposes set forth in subsection (1) of this Section. [TCR 86-79]

3-620 Bribery of a juror; penalty; juror receiving bribe; penalty.

1. A person commits bribery of a juror if he/she offers, confers, or agrees to confer any benefit upon a juror with intent to influence the juror's vote, opinion, decision, or other action as a juror.
2. Bribery of a juror is a Class I offense.
3. A juror commits a Class I offense if he/she accepts or agrees to accept any benefit from another person for the purpose of influencing his/her vote, opinion, decision, or other action a juror. [TCR 86-79]

3-621 Tampering with witnesses, informants, or jurors; penalty.

1. A person commits an offense if, believing that an official proceeding or investigation of a criminal matter is pending or about to be instituted, he/she attempts to induce or otherwise cause a witness, informant, or juror to:
   A. Testify or inform falsely; or
   B. Withhold any testimony, information, document, or thing; or
   C. Elude legal process summoning him/her to testify or supply evidence; or
   D. Absent him/herself from any proceeding or investigation to which he/she has been legally summoned.
2. Tampering with witnesses, informants, and jurors is a Class I offense. [TCR 86-79]

3-622 Jury tampering; penalty.

1. A person commits jury tampering if with intent to influence a juror's vote, opinion, decision, or other action in a case, he/she attempts directly or indirectly to communicate with a juror other than as a part of the proceedings in the trial of the case.
2. Jury tampering is a Class I offense. [TCR 86-79]

3-623 Tampering with physical evidence; penalty; physical evidence, defined.

1. A person commits the offense of tampering with physical evidence if, believing that an official proceeding is pending or about to be instituted and acting without legal right or authority, he/she:
   A. Destroys, mutilates, conceals, removes, or alters physical evidence with the intent to impair its verity or availability in the pending or prospective official proceeding; or
   B. Knowingly makes, presents, or offers any false physical evidence with intent that it be introduced in the pending or prospective official proceeding.
2. Physical evidence, as used in this Section, shall mean any article, object, document, record, or other thing of physical substance.
3. Tampering with physical evidence is a Class I offense. [TCR 86-79]

3-624 Simulating legal process; penalty.

1. A person commits the offense of simulating legal process if he/she sends, delivers, or mails or in any manner shall cause to be sent, delivered, or mailed, any paper or document simulating or intended to simulate a summons, complaint, writ, or other court process of any kind to any person, firm, company, or corporation, for the purpose and intent of forcing payment of any alleged claim, debt, or legal obligation.
2. Simulating legal process is a Class II offense. [TCR 86-79]

3-625 Employee; penalized due to jury service; prohibited; penalty.

1. Any person who is summoned to serve on jury duty shall not be subject to discharge from employment, loss of pay, loss of sick leave, loss of vacation time, or any other form of penalty, as a result of his/her absence from employment due to such jury duty, upon giving reasonable notice to his/her employer of such summons. No employer shall subject an employee to discharge, loss of pay, loss of sick leave, loss of vacation time, or any other form of penalty on account of his/her absence from employment by reason of jury duty.
2. Any person violating this provision commits an infraction. [TCR 86-79, 89-87]

3-626 Impersonating a peace officer.

1. A person commits the offense of impersonating a peace officer if he/she falsely pretends to be a peace officer and performs any act in that pretended capacity.
2. Impersonating a peace officer is a Class II offense. [TCR 86-79]

3-627 Impersonating a public servant.

1. It shall be unlawful to falsely pretend to hold a position in the public service with the purpose to induce another to submit to such pretended official authority, or otherwise to act in reliance upon that pretense to his/her prejudice.
2. It shall be unlawful to exercise or attempt to exercise any of the functions of a police officer when one has not been elected or appointed to office.
3. Impersonating a public servant is a Class II offense. [TCR 86-79]

3-628 Official misconduct; penalty.

1. A public servant commits official misconduct if he/she knowingly violates any statute or lawfully adopted rule or regulation relating to his/her official duties.

2. A public servant commits official misconduct if he/she solicits, accepts or agrees to accept any financial benefit as compensation for having, as a public servant, given a decision, opinion, recommendation or vote favorable to another, or for having otherwise exercised a discretion in his/her favor, or for having violated his/her duty; or offer, confer or agree to confer compensation acceptance of which is prohibited by this Section.
3. A public servant commits official misconduct if he/she knowingly commits an unauthorized act which purports to be an act of his/her office, or knowingly refrains from performing a nondiscretionary duty imposed on him/her by law, or a public servant commits official misconduct if he/she knowing that official action is contemplated or in reliance on information which he/she has acquired by virtue of his/her office or from another public servant, which information has not been made public, he/she:
   A. Acquires or divests him/herself of a pecuniary interest in any property, transaction, or enterprise which may be affected by such action or information; or
   B. Speculates or wagers on the basis of such action or information, or knowingly aids another to do any of the foregoing; or
   C. Aids, advises or encourages another to do any of the foregoing with intent to confer on any person a special pecuniary benefit.
4. Official misconduct is a Class I offense. [TCR 86-79]

3-629 Oppression under color of office; penalty.

1. Any public servant or peace officer who, by color of or in the execution of his/her office, shall designedly, willfully or corruptly injure, deceive, harm, or oppress any person, or shall attempt to injure, deceive, harm, or oppress any person, commits oppression under color of office, and shall be answerable to the party so injured, deceived, or harmed or oppressed in treble damages.
2. Oppression under color of office is a Class I offense. [TCR 86-79]

3-630 Misusing public money.

1. It shall be unlawful for a person charged with the receipt, safekeeping, transfer or disbursement of public monies to:
   A. Without lawful authority appropriate the money or any portion of it to his/her own use or the use of another; or
   B. Lend the money or any portion thereof without lawful authority; or
   C. Fail to keep the money in his/her possession until lawfully disbursed or paid out according to law; or
   D. Deposit the money in an unauthorized bank or with a person not lawfully authorized to receive such; or
   E. Knowingly keep any false account, or make a false entry or erasure in any account of or relating to the money; or
   F. Fraudulently alter, falsify, conceal, destroy, or obliterate any such account; or
   G. Knowingly refuse or omit to pay over on lawful demand by competent authority any public monies in his/her hands; or
   H. Knowingly omit to transfer money when transfer is required by proper authority; or
   I. Make a profit for him/herself or another when not lawfully entitled to such, or in an unlawful manner, out of public monies; or
   J. Fail to pay over to the proper account or authority any fines, forfeitures, or fees received by him/her; or

K. Otherwise handle public money in a manner not authorized by law for his/her own benefit; or

L. Handle public money in a reckless manner as a result of which a risk of loss of such money is significant.

2. "Public money" includes all money, bonds, and evidences of indebtedness or their equivalent, belonging to, or received or held by the Tribe or any other government, or any account or money held by the Tribe or government for any individual or group.

3. Misuse of public monies is a Class I offense. [TCR 86-79]

3-631 Improper influence in official matters.

1. It shall be unlawful to:

A. Threaten unlawful harm to any person with intent to influence another's decision, opinion, recommendation, vote or other exercise or discretion as a public servant, party official, or voter; or

B. Threaten harm to any public servant or relative of a public servant with the intent to influence his/her decision, opinion, recommendation, vote or other exercise of discretion in a judicial, legislative, or administrative proceeding; or

C. Threaten harm to any public servant or official or relative of either with the intent to influence him/her to violate his/her duty; or

D. Privately address any public servant who has or will have an official discretion in a judicial or administrative proceeding and making thereby any representation, entreaty, argument, or other communication designed to influence the outcome on the basis of considerations other than those authorized by law.

2. It is no defense to prosecution under this Section that a person whom the actor sought to influence was not qualified to act in the desired way, whether because he/she had not yet assumed office, or lacked jurisdiction, or for any other reason.

3. Improper influence in official matters is a Class I offense. [TCR 86-79]

3-632 Retaliation for past official action.

1. It shall be unlawful to harm any person by any unlawful act in retaliation for anything lawfully done by another person in his/her capacity as a public servant.

2. Retaliation for past official action is a Class I offense. [TCR 86-79]

3-633 Improper gifts to public servants.

1. It shall be unlawful to knowingly confer or offer or agree to confer any benefit to a public servant with the intent to induce an exercise of his/her discretion in an unlawful manner, or to undermine official impartiality.

2. This Section shall not apply to:

A. Fees prescribed by law to be received by a public servant, or any benefit for which the recipient gives lawful consideration or to which he/she is otherwise entitled; or

B. Gifts or other benefits conferred on account of kinship, traditional ceremonies, or other personal, professional or business relationship independent of the official status of the receiver; or

C. Trivial benefits incidental to personal, professional or business contacts and involving no substantial risk of undermining official impartiality.

3. Improper gifts to public servants is a Class I offense. [TCR 86-79]

3-634 Special influence.

1. It shall be unlawful to solicit, receive, or agree to receive any financial benefit as consideration for exerting special unlawful influence upon a public servant, in order to influence that public servant to violate the law or to exercise his/her discretion in a particular fashion or procuring another to do so; or to offer, confer or agree to confer any financial benefit receipt of which is prohibited by this Section.
2. Special influence is a Class I offense. [TCR 86-79]

3-635 Doing business without a license.

1. It shall be unlawful to commence or carry on any business, trade, profession, or calling the transaction or carrying on of which is required by law to be licensed, without having an appropriate license.
2. Doing business without a license is an infraction. [TCR 86-79, 89-87]

3-636 Tampering with public property.

1. It shall be unlawful to:
   A. Steal, deface, mutilate, alter, falsify, or remove all or part of any record, map, book, document or thing, or any court documents or records, placed or filed in any public office, or with any public officer, or to permit another to do so; or
   B. Knowingly injure, deface or remove any signal, monument or other marker placed or erected as part of an official survey of the Tribal, state or federal government without authority to do so; or
   C. Intentionally deface, obliterate, tear down, or destroy any copy or transcript or extract from any law or any proclamation, advertisement, or notice set up or displayed by any public officer or court, without authority to do so and before the expiration of the time for which the same was to remain set up.
2. Tampering with public property is a Class III offense. [TCR 86-79, 89-87]

3-637 Injuring public property.

1. It shall be unlawful to:
   A. Intentionally breakdown, pull down or otherwise injure or destroy any jail or other place of confinement; or
   B. Intentionally and without authority dig up, remove, displace or otherwise injure or destroy any public roadway, highway or bridge or private road or bridge or other public building or structure; or
   C. Remove or injure any milepost or road or highway sign or marker or any inscription on them while such is erected along a road or highway; or
   D. Knowingly and without authority to do so, remove, injure, deface, or destroy any public building or structure, or any personal property belonging to the Winnebago Tribe of Nebraska or to any other government or government agency.
2. Injuring public property is a Class I offense. [TCR 86-79]

3-638 Bail jumping.

1. It shall be unlawful to purposely or knowingly fail to obey an order, subpoena, warrant or command duly made, issued, or given by a Court of the Winnebago Tribe of Nebraska or any officer thereof or otherwise issued according to law, without just cause.
2. This Section shall not apply to a failure to appear as a party in a civil action where default or a similar remedy is available to the other party.
3. Bail jumping is Class I offense. [TCR 86-79]

3-639 Failure to obey a lawful order of the Court.

1. It shall be unlawful to purposely or knowingly fail to obey an order, subpoena, warrant or command duly made, issued, or given by a Court of the Winnebago Tribe or any officer thereof or otherwise issued according to law, without just cause.
2. Failure to obey a lawful order of the Court is a Class I offense. [TCR 86-79]

3-640 Repealed. [TCR 86-79, 89-87]

3-641 Neglecting to serve a warrant; penalty; forfeiture of office.

1. When any warrant legally issued by any judge of the Winnebago Tribal Court in any criminal case shall be delivered into the hands of any constable, sheriff, or other officer, to be executed, whose duty it shall be to execute such warrant, it is hereby made the duty of such constable, sheriff, or other officer to serve the same immediately, and if such constable, sheriff, or other officer shall neglect or delay to serve any such warrant, delivered to him/her as aforesaid, when in his/her power to serve the same, either alone or by calling upon assistance according to law, he/she commits the offense of neglecting to serve a warrant.
2. Neglecting to serve a warrant is a Class II offense. [TCR 86-79, 89-87]

3-642 Mutilating a flag; penalty; flag, defined.

1. A person commits the offense of mutilating a flag if such person intentionally casts contempt or ridicule upon a flag by mutilating, defacing, defiling, burning, or trampling upon such flag.
2. Flag as used in this Section shall mean any flag, ensign, banner, standard, colors, or replica or representation thereof which is an official or commonly recognized symbol of the United States.
3. Mutilating a flag is an infraction. [TCR 86-79, 89-87]

3-643 Illegal solicitation.

1. It shall be unlawful for any person, officer or employee of the Winnebago Tribe of Nebraska or any Tribal member to solicit funds, equipment, home furnishings, food and other items such as tickets to entertainment activities on behalf of the Winnebago Tribal membership or the Winnebago Tribe of Nebraska, without the express written authorization of the Winnebago Tribe of Nebraska. To secure proper authorization to solicit in the name of the Winnebago Tribe of Nebraska or its members: the Chairman of the Winnebago Tribe may issue an express letter of approval, certified by a notary, a copy to be placed on file with the treasurer of the Winnebago Tribe of Nebraska. Such letter shall describe a specific time limitation for the authorization, name the person(s) doing the solicitation, and describe the items and quantity of items being solicited.
2. This provision does not apply to:

A. Tribally administered programs soliciting donations of such items or fund-raising efforts for the express purpose of implementing program activities for program participants.
B. Projects created for special purposes by organized recreational, social, welfare, committees of the Council specially sanctioned in writing by the Tribal Council to implement specified community events.
C. Organized church groups implementing fund-raising activities for church sponsored programs.
D. Educational programs of the local schools implementing fund-raising activities for school sponsored programs.
E. Organized athletic groups implementing fund-raising activities for athletic events and purchase of athletic equipment and uniforms.
F. Local chapters of national organizations such as scouting groups, veterans groups, implementing fundraising activities for chapter sponsored activities or nationally sponsored activities.

3. Illegal solicitation is a Class II offense. [TCR 86-79, 89-87]

3-644 Repealed. [TCR 86-79, 89-87]

3-645 Failure to appear; penalty. Whoever is charged with an offense under this Code and is released from custody under bail, recognizance, or a conditioned release and willfully fails to appear before the Court granting such release when legally required or to surrender himself within three days thereafter, shall be guilty of a Class II offense, in addition to any other penalties or forfeitures provided by law. [TCR 86-79, 86-106]

3-646 Sell or exchange of property for promise to vote prohibited. It is unlawful for any candidate for public office to give, or promise to give, any item of personal property, including alcohol, in exchange for the promise of the grantee to vote for the candidate in any public election. Violation of this provision is a Class I offense. [TCR 98-64]

TITLE 3
ARTICLE 7
CRIMES AGAINST PUBLIC HEALTH, SAFETY AND WELFARE
(As revised May 21, 2014)

3-701 Bigamy; penalty; exception.
3-702 Incestuous marriages; declared void.
3-703 Incest; penalty.
3-704 Child abuse; penalty.
3-705 [REPEALED by TCR 15-133]
3-706 [REPEALED by TCR 15-133]
3-706.1 [REPEALED by TCR 15-133]
3-707 [REPEALED by TCR 15-133]
3-708 [REPEALED by TCR 15-133]
3-708 Violations; penalty.
3-709 Privileged communication; patient and physician; husband and wife; not ground for excluding evidence.
3-710 Abandonment of spouse, child or dependent stepchild; child, defined.
3-711 Criminal nonsupport; penalty; exception.
3-712 Protective custody; penalty.
3-713 Failure to send child to school; truancy; penalties.
3-714 Curfew; penalty.
3-715 Contributing to the delinquency of a child; definitions; procuring alcohol for a minor; penalty.
3-716 Minor in possession; penalty.
3-717 Tobacco; minor in possession; sale to minors; smoking in tribal building prohibited; penalties; exemption.
3-718 Trafficking in children; penalty.
3-719 Welfare offense; penalty.
3-720 Desecration; penalty.
3-721 Disrupting a public or religious assembly.
3-722 Violation of privacy; penalty.
3-723 Criminal defamation; penalty.
3-724 Harassment; penalty.
3-725 Disorderly conduct; penalty.
3-726 Prostitution; penalty; citation in lieu of arrest.
3-727 Pandering; penalty.
3-728 Pandering; evidence.
3-729 Keeping a place of prostitution; penalty.
3-730 Prostitution cases; incrimination testimony; how treated.
3-731 Debauching a minor; penalty.
3-732 Public indecency; penalty.
3-733 Obscenity; penalty.
3-734 Rioting; penalty.
3-735 Failure to disperse; penalty.
3-736 Deadly weapon, knife, firearms, other terms; defined.
3-737 Weapons offense; penalty.
3-738 Aggravated weapons offense; penalty.
3-739 Using firearms to commit a crime; penalty.
3-740 Dangerous devices; penalty.
3-741 Fireworks offense; penalty.
3-742 Inhaling or drinking certain compounds; penalty.
3-743 Selling and offering for sale certain compounds; use; knowledge of seller; unlawful.
3-744 Act, exceptions.
3-745 [Reserved.]
3-746 Abandoning, or concealing a dead human body; penalty.
3-747 Concealing the death of another person; penalty.
3-748 Intimidation by phone call; penalty; prima facie evidence.
3-749 Interfering with a public service company; penalty.
3-750 Maintaining a nuisance; penalty; abatement or removal.
3-751 Disturbing the peace; penalty.
3-752 Telecommunications violations; penalty.
3-753 Animal, cruel mistreatment, cruel neglect, and abandon; defined.
3-754 Cruelty to animals; penalty; authorized or permitted conduct.
3-755 Livestock offense; penalty.
3-756 Waters offense; penalty.
3-757 Assault of a Human Embryo or Fetus; terms defined; limitations.
3-758 Assault of a Human Embryo or Fetus in the first degree; penalty.

TITLE 3
ARTICLE 7
CRIMES AGAINST PUBLIC HEALTH, SAFETY AND WELFARE
(continued)

3-759 Assault of a Human Embryo or Fetus in the second degree; penalty
3-760 Assault of a Human Embryo or Fetus in the third degree; penalty.
3-761 Indecent liberties; penalty.
3-762 Video Recording and Distribution of Criminal Assaults

3-701 Bigamy; penalty; exception.

1. If any married person, having a husband or wife living, shall marry any other person, he/she shall be deemed guilty of bigamy, unless as an affirmative defense it appears that at the time of the subsequent marriage:
   A. The accused reasonably believes that the prior spouse is dead; or
   B. The prior spouse had been continually absent for a period of five years during which the accused did not know the prior spouse to be alive; or
   C. The accused reasonably believed that he/she was legally eligible to remarry.
2. Any unmarried person who knowingly marries a person who is married commits bigamy.
3. Bigamy is a Class I offense. [TCR 86-79]

3-702 Incestuous marriages; declared void. Incestuous marriages are marriages between parents and children, grandparents and grandchildren of every degree, between brothers and sisters of the half as well as the whole blood, and between uncles and nieces, aunts and nephews. Incestuous marriages are declared to be absolutely void. [TCR 86-79]

3-703 Incest; penalty.

1. Any person who shall knowingly intermarry or engage in sexual penetration with any person who fails within the degrees of consanguinity set forth in Section 3-702, or any person who engages in sexual penetration with his/her minor stepchild commits incest.
2. Incest is a Class I offense.
3. For purposes of this Section, the definitions found in Section 3-417 shall be used.
4. The testimony of a victim shall be entitled to the same weight as the testimony of victims of other crimes under this Code. [TCR 86-79]

3-704 Child abuse; penalty.

1. A person commits child abuse if he/she knowingly, intentionally, or negligently causes or permits a minor child to be:
   A. Placed in a situation that endangers his/her life or health, or
   B. Cruelly confined or cruelly punished; or
   C. Deprived of necessary food, clothing, shelter, or care.
2. The privilege between patient and physician and between husband and wife shall not be available for excluding or refusing testimony in any prosecution for a violation of this Section.
3. Child abuse is a Class I offense. [TCR 86-79]

3-705 [REPEALED] [TCR 86-79, 91-14, 15-133]

3-706 [REPEALED] [TCR 86-79, 91-14, 15-133]

3-706.1 [REPEALED] [TCR 86-79, 91-14, 15-133]

3-707 [REPEALED] [TCR 86-79, 91-14, 15-133]

3-708 [REPEALED] [TCR 86-79, 91-14, 15-133]

3-709 Privileged communication; patient and physician; husband and wife; not ground for excluding evidence. The privileged communication between patient and physician, and between husband and wife, shall not be a ground for excluding evidence in any judicial proceeding resulting from a report pursuant to Sections 3-704 to 3-705. [TCR 86-79]

3-710 Abandonment of spouse, child or dependent stepchild; penalty; child, defined.

1. Any person who abandons and neglects or refuses to maintain or provide for his/her spouse, or his/her child, or dependent stepchild, whether such child be born in or out of wedlock, commits abandonment of spouse, child, or dependent stepchild; provided however, that such abandonment results in undue hardship to such spouse, child or dependent stepchild.
2. For the purpose of this Section, child shall mean an individual under the age of sixteen years.
3. When any person abandons and neglects to provide for his/her spouse, or his/her child, or dependent stepchild for three consecutive months or more, it shall be prima facie evidence of intent to violate the provisions of subsection (1) of this Section.
4. Abandonment of spouse, child, or dependent stepchild is an infraction. [TCR 86-79, 89-87]

3-711 Criminal nonsupport; penalty; exception.

1. Any person who intentionally fails, refuses, or neglects to provide proper support which he/she knows or reasonably should know he/she is legally obliged to provide to a spouse, minor child, minor stepchild, or other dependent, commits criminal nonsupport.
2. Support includes but is not limited to food, clothing, medical care, and shelter.
3. This Section does not exclude any applicable civil remedy.
4. Criminal nonsupport is a Class III offense. [TCR 86-79]

3-712 Protective custody; penalty. A person who, as a result of severe intoxication, lacks the ability to perform normal physical functions or presents a clear and immediate danger to him/herself or others may be taken into protective custody and held in protective custody for a period not to exceed seventy two hours; provided that such individual shall be released without unnecessary delay upon achieving sobriety. Nothing in this Section shall be construed as constituting a criminal offense and no warrants, complaints or summons shall issue pursuant to this Section. However, under this Section and the authority vested in law enforcement officers pursuant to Rule IB-302.2, Article 3, "Proceedings Before Trial" of Title IA, "Criminal Procedure" of the Winnebago Tribe of Nebraska Law and Order Code, officers may issue a citation in lieu of arrest. The officer must then make available to the authorized personnel at the detention or health care facility a copy of such citation for the individual's file. The facility personnel may then use the citation to inform the individual of his/her protective custody status. [TCR 86-79, 87-114, 88-07]

3-713 Failure to send child to school; truancy; penalties.

1. A person is guilty of failure to send a child to school if, being the parent, guardian or other person having a child in his/her custody and care, he/she, without good cause, neglects or refuses to send such child to school in accordance with the requirements of Title 7, Article 8, of the Winnebago Tribal Code.
2. It shall be unlawful for any minor under the age of nineteen, but over the age of seven, to be absent from school without good cause.
3. A violation of this Section is an infraction. [TCR 86-79, 89-87, 05-03, 06-49]

3-714 Curfew; penalty.

1. It shall be unlawful for a parent, guardian or other person having physical charge of a minor to allow said minor to be away from his/her place of residence in a public place, or a private place other than the place where he/she intends to spend the night with the permission of the owner of such place, or in a vehicle driving about, after the hour of ten o' clock p.m. local time, until six o'clock a.m., unless accompanied by a parent or guardian having physical charge of said minor or in attendance at or returning directly home from an organized school, church, Tribal or public function (with permission of his/her guardian or parent); or
2. Any minor shall not be away from his/her place of residence in a public place, or a private place other than the place where he/she intends to spend the night with the permission of the owner of such place, or in a vehicle driving about, after the hour of ten o'clock p.m., local time, until six o'clock a.m. The minor is excused from a violation of this curfew statute if accompanied by a parent or guardian or in attendance at or returning directly home from an organized school, church, Tribal or public function (with the permission of his/her guardian or parent).
3. Violation of this curfew Section is an infraction.
4. Juveniles picked up after curfew shall be returned to their home; if there is not an adult present in the home, placement shall be made at the Tribal jail or facility available to law enforcement until the parent or Court takes custody of the child. The cost of such detention may be assessed to the parent or guardian by the Court.
5. The curfew shall be extended for a period of time every year to eleven o'clock p.m. for any minor under the age of eighteen, but over the age of fourteen. The first day of the extended curfew shall be Memorial Day and the last day of the extended curfew shall be the day before Labor Day. [TCR 86-79, 89-87, 11-163]

3-715 Contributing to the delinquency of a child; definitions; procuring alcohol for a minor; penalties.

1. Any person who, by any act, encourages, causes, or contributes to the delinquency or need for supervision of a child under eighteen years of age, so that such child becomes, or will tend to become, a delinquent child, or a child in need of supervision, commits the offense of contributing to the delinquency of a child.
2. The following definitions shall be applicable to this Section:
   A. "Delinquent child" shall mean any child under the age of eighteen years who has violated any law of the Tribe, of the state, or any city or village ordinance; and
   B. "Child in need of supervision" shall mean any child under the age of eighteen years (i) who, by reason of being wayward or habitually disobedient, is uncontrolled by his/her parent, guardian, or custodian, (ii) who is habitually truant from school or home; or (iii)

who deports him/herself so as to injure or endanger seriously the morals or health of him/herself or others.

3. Any person who gives, sells or otherwise provides alcoholic liquor to a person under the age of twenty-one commits the offense of procuring alcohol for a minor.
4. Contributing to the delinquency of a child is a Class III offense.
5. Procuring alcohol for a minor is a Class II offense and shall be subject to a mandatory minimum penalty of thirty (30) days imprisonment and a five hundred dollar ($500.00) fine. [TCR 86-79, 89-87, 14-47]

3-716 Minor in possession; penalty.

1. No person under the age of twenty-one may sell or dispense or have in his/her possession or physical control any alcoholic liquor in any tavern or in any other place including public streets, alleys, roads, highways, upon property owned by the Winnebago Tribe of Nebraska, the United States, the state or inside any vehicle while in or on any other place including but not limited to the public streets, alleys, roads, highways, or upon property owned by the Winnebago Tribe of Nebraska, the United States, or the state.
2. Minor in possession is a Class III offense. [TCR 86-79, 88-53]

3-717 Tobacco; minor in possession; sale to minors; smoking in Tribal building prohibited; penalties; exemption.

1. No person under the age of eighteen may sell or dispense or have in his/her possession or physical control any tobacco in any form whatsoever (including cigarette paper) in any place unless exempted by subsection 4 of this Section.
   A. Minor in possession of tobacco is an infraction as defined by Rule 1B-706(D).
   B. In addition to the fine authorized by Rule 1B-706(D), a minor found to have violated this subsection may be required to:
      i. Attend an Environmental Tobacco Smoke/Tobacco Cessation class approved by the Tribal Health Department;
      ii. Prepare and submit a research paper on tobacco; and/or
      iii. Perform community service.
2. Whoever shall sell, give or furnish, in any way, any tobacco in any form whatsoever, or any cigarettes or cigarette paper, to any minor under eighteen years of age shall be guilty of an infraction as defined by Rule 1B-706(D). In addition to the fine authorized by Rule 1B-706(D), a person found to have violated this subsection may be required to perform community service.
3. Except as otherwise provided in subsection 4 of this Section, it is unlawful for any person to use tobacco inside or within fifty feet of all tribally operated buildings and recreation areas. Tribal vehicles are to be tobacco-free.
   A. Violation of this subsection is an infraction as defined by Rule 1B-706(D).
   B. A person charged with violating this subsection may voluntarily participate, at his or her own expense, in an Environmental Tobacco Smoke/Tobacco Cessation program approved by the Tribal Health Department, and such charge shall be dismissed upon successful completion of the program.
4. The provisions of this Section shall not apply to:
   A. Any traditional ceremonies or functions of the Winnebago Tribe;
   B. Designated smoking areas of the Winnebago Tribe's gaming operations;
   C. Areas outside of tribally operated building and recreation areas as designated by the Tribal Council as smoking areas. [TCR 86-79, 89-87, 08-99]

3-718 Trafficking in children; penalty.

1. It shall be unlawful to:
   A. Accept any compensation, in money, property or other thing of value, at any time, from the person or persons adopting a child, for services of any kind performed or rendered, or purported to be performed or rendered, in connection with such adoption; or
   B. Accept any compensation, in money, property or other thing of value, from any other person, in return for placing, assisting to place, or attempting to place a child for adoption or for permanent care in a foster home; or
   C. Offer to place, or advertise to place, a child for adoption or for care in a foster home, as an inducement to any woman to enter an institution or home or other place for maternity care or for the delivery of a child.
2. "Child" means an unmarried or unemancipated person under the age of eighteen years.
3. This Section does not apply to attorneys or advocates licensed by the Tribal Courts receiving reasonable fee for legal services actually rendered in the course of lawful adoption proceedings, nor do subsections (1)(A) or (2)(A) apply to any bona fide social worker or government employee receiving his/her normal salary and making such placements as a part of his/her official duties.
4. Trafficking in children is a Class II offense. [TCR 86-79]

3-719 Welfare offense; penalty.

1. A person is guilty of welfare offense if:
   A. He/she gives false information to another for the purpose of obtaining or retaining welfare benefits; or
   B. He/she knowingly fails to correct misinformation which enables him/her to obtain or retain welfare benefits; or
   C. He/she continues to accept and use for his/her own benefit or the benefit of another, welfare benefits to which he/she knows he/she is not entitled; or
   D. He/she uses or expends money or commodities granted him/her as a welfare benefit in an improper manner or in a manner which does not proportionately benefit each of those persons intended to benefit by the grant; or
   E. He/she knowingly uses a welfare benefit in a manner contrary to the regulations relating thereto.
2. Welfare offense is a Class III offense, except that trade using commodities as payment in kind shall be treated as an infraction under subsection (C). [TCR 86-79, 89-87]

3-720 Desecration; penalty.

1. It shall be unlawful to purposely desecrate any public monument or structure; or to purposely desecrate a place of worship or burial, or other sacred place.
2. Desecrate means to deface, disturb, damage, pollute, destroy, take or otherwise physically mistreat in a way that the actor knows, or believes, will outrage the sensibilities of persons likely to observe or discover his/her action. It includes grazing by livestock, farming, irrigation or other activity.
3. Desecration is a Class III offense. [TCR 86-79]

3-721 Disrupting a public or religious assembly.

1. It shall be unlawful to intentionally prevent or disrupt a lawful meeting or religious assembly, by doing any act tending to obstruct or interfere with it physically; or by making any utterance, gesture or display designed to outrage the sensibilities of the group or prevent the assembly from conducting its business.
2. Disrupting a public or religious assembly is a Class III offense. [TCR 86-79]

3-722 Violation of privacy; penalty.

1. It shall be unlawful, except as authorized by law, to:
   A. Trespass on property with intent to subject anyone to eavesdropping or other surveillance in a private place; or
   B. Install in any device for observing, photographing, recording, amplifying, or broadcasting sounds or events in such place, or use any such unauthorized installation; or
   C. Install or use outside of any private place any device for hearing, recording, amplifying, or broadcasting sounds originating in such place which would not ordinarily be audible or comprehensible outside, without the consent of the person or persons entitled to privacy there; or
   D. Divulge without the consent of the sender or receiver the existence or contents of any such message if the actor knows that the message was illegally intercepted, or if he/she learned of the message in the course of employment with an agency engaged in transmitting it.
2. Definitions:
   A. "Eavesdrop" means to overhear, record, amplify, or transmit any part of an oral or written communication of others without the consent of at least one party thereto by means of any electrical, mechanical or other device.
   B. "Private place" means a place where one can reasonably expect to be safe from casual or hostile intrusion or surveillance.
3. Violation of privacy is a Class III offense. [TCR 86-79]

3-723 Criminal defamation; penalty.

1. It shall be unlawful to knowingly and with malicious intent communicate to any person orally or in writing any information which one knows or should know to be false and knowing that the information tends to impeach the honesty, integrity, virtue or reputation, or publish the natural defects of one who is alive, or who has not been deceased for a period exceeding twenty years, and thereby expose him/her to public hatred, contempt or ridicule. An injurious publication is presumed to have been malicious if no justifiable motive for making it is shown by way of defense.
2. Criminal defamation is a Class III offense. [TCR 86-79]

3-724 Harassment; penalty.

1. It shall be unlawful, with the purpose to annoy or alarm another, to insult, taunt, or challenge another, in a manner likely to provide a violent or disorderly response; or to make repeated communications anonymously or at extremely inconvenient hours, or in offensively coarse language.
2. Harassment is an infraction. [TCR 86-79, 89-87]

3-725 Disorderly conduct; penalty.

1. It shall be unlawful to purposely cause public inconvenience, annoyance or alarm, or recklessly create a risk thereof, by:
   A. Engaging in fighting, or threatening to engage in violent or tumultuous behavior;
   B. Making unreasonable noise or offensively coarse utterances, gestures, displays, or addressing abusive language to any person present;
   C. Creating a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor;
   D. Appearing in public places in an intoxicated condition and doing any of the following:
      i. Passing out or falling or sleeping in a public place or on the property of another without permission; or
      ii. Bothering, disrupting or otherwise intruding upon another person or group of persons, or
      iii. Appearing or being found in an area set aside for religious or ceremonial activities which have traditionally, or by order of Tribal or conducting authorities, been set aside for use, free from alcoholic beverage consumption or the presence of intoxicated persons, during the period of such a religious or ceremonial public activity.
2. "Public" means affecting or likely to affect persons in a place to which the public or a substantial group of the public has access and includes apartment houses, and office buildings, transport facilities, businesses open to the public, and places of entertainment or amusement.
3. Disorderly conduct is a Class III offense. [TCR 86-79]

3-726 Prostitution; penalty; citation in lieu of arrest.

1. Any person who performs, offers, or agrees to perform any act of sexual penetration, as defined in subsection (6) of Section 3-417 with anyone commits prostitution. Any person violating this Section shall be issued a citation in lieu of arrest.
2. Prostitution is a Class III offense. [TCR 86-79, 89-87]

3-727 Pandering; penalty.

1. A person commits pandering if such person:
   A. Entices another person to become a prostitute; or
   B. Inveigles, entices, persuades, encourages, or procures any person to come onto or leave this reservation for the purpose of prostitution or debauchery; or
   C. Receives or gives or agrees to give any money or other thing of value for procuring or attempting to procure any person to become a prostitute or commit an act of prostitution or come onto this reservation or leave this reservation for the purpose of prostitution or debauchery.
2. Pandering is a Class I offense. [TCR 86-79]

3-728 Pandering; evidence.

1. Any person referred to in Section 3-727 shall be a competent witness in any prosecution thereunder to testify to any and all matters, including conversation with the accused, or by the accused with third persons, in his/her presence notwithstanding having married the accused either before or after

the violation of any of the provisions of such Section; and the act and state of marriage shall not be a defense to any violation of such Section.

2. Pandering shall be an exception to the husband-wife privilege. [TCR 86-79]

3-729 Keeping a place of prostitution; penalty.

1. Any person who has or exercises control over the use of any place which offers seclusion or shelter for the practice of prostitution and who knowingly grants or permits the use of such place for the purpose of prostitution commits the offense of keeping a place of prostitution.
2. Keeping a place of prostitution is a Class II offense. [TCR 86-79]

3-730 Prostitution cases; incrimination testimony; how treated. In all cases arising under Sections 3-726 to 3-730, no person shall be excused from testifying against another person by reason of such testimony tending to incriminate the person testifying, but testimony so given, unless voluntary, shall in no case be used against the person so testifying in any criminal prosecution or otherwise. [TCR 86-79]

3-731 Debauching a minor; penalty.

1. Any person not a minor commits the offense of debauching a minor if he/she shall debauch or deprave the morals of any unemancipated boy or girl under the age of eighteen years by:
   A. Lewdly inducing such boy or girl carnally to know any other person; or
   B. Soliciting any such boy or girl to visit a house of prostitution or other place where prostitution, debauchery, or other immoral practices are permitted or encouraged, for the purpose of prostitution or sexual penetration; or
   C. Arranging or assisting in arranging any meeting for such purpose between any such boy or girl and any female or male of dissolute character or any inmate of any place where prostitution, debauchery, or immoral practices are permitted or encouraged; or
   D. Arranging or aiding or assisting in arranging any meeting between any such boy or girl and any other person for the purposes of sexual penetration.
2. Debauching a minor is a Class II offense. [TCR 86-79, 89-87]

3-732 Public indecency; penalty.

1. A person eighteen years of age, or over, commits public indecency if such person performs or procures, or assists any other person to perform, in a public place and where the conduct may reasonably be expected to be viewed by members of the public:
   A. An act of sexual penetration; or
   B. An exposure of the genitals of the body done with intent to affront or alarm any person; or
   C. A lewd fondling or caressing of the body of another person of the same or opposite sex.
2. Public indecency is a Class III offense. [TCR 86-79]

3-733 Obscenity; penalty.

1. It shall be unlawful to:
   A. Sell, deliver or provide, or offer or agree to sell, deliver or provide, any obscene writing, picture, record or other representation or embodiment that is obscene; or
   B. Present or direct an obscene play, dance, or performance, or participate in that portion thereof which makes it obscene; or
   C. Publish, exhibit or otherwise make available any obscene material;

D. Possess any obscene material for purposes of sale or other commercial dissemination; or
E. Sell, advertise, or otherwise commercially disseminate material, whether or not obscene, by representing or suggesting that it is obscene.

2. Material is obscene if, considered as a whole:
   A. It lacks serious literary, artistic, political, or scientific value; and
   B. It depicts or describes nudity, sex or excretion in a patently offensive manner that goes substantially beyond customary limits of candor in describing or representing such matter; and
   C. If the average person, applying contemporary community standards, would find that the material, taken as a whole, appeals predominantly to a morbid or unnatural interest in nudity, sex, or excretion.
3. A person who disseminates or possesses obscene material in the course of his/her business is presumed to do so knowingly or recklessly.
4. Predominant appeal shall be judged with reference to ordinary adults unless it appears from the character of the material or the circumstances of its dissemination to be designed for children or other specially susceptible audience.
5. Undeveloped photographs, molds, printing plates and the like, shall be deemed obscene notwithstanding that processing or other acts may be required to make the obscenity patent or to disseminate it.
6. It shall be defense to a prosecution under this Section that the dissemination of the obscene material was restricted to institutions or persons having scientific, educational, governmental or other similar justification for possessing obscene material.
7. Obscenity is a Class III offense. [TCR 86-79]

3-734 Rioting; penalty.

1. It shall be unlawful to simultaneously, with two or more other persons, engage in tumultuous or violent conduct in a public place which endangers persons or property, and thereby knowingly or recklessly create a substantial risk of causing public alarm; or to assemble with two or more persons with the purpose of engaging soon thereafter in the above described conduct.
2. Rioting is a Class I offense. [TCR 86-79]

3-735 Failure to disperse; penalty.

1. It shall be unlawful to refuse or knowingly fail to obey an order to dispense or leave the immediate vicinity given by a law enforcement officer or other public servant performing an enforcement function, at the scene of a riot, fire, or other public disorder or given in the course of the investigation of the commission of an accident, fire, offense or suspected offense.
2. Failure to disperse is a Class III offense. [TCR 86-79, 89-87]

3-736 Deadly weapon, knife, firearms, other terms; defined.

1. "Deadly weapon" means any item that in the manner of its use or intended use is capable of causing death or serious bodily injury. In determining whether an item, object or thing not commonly known as a dangerous weapon is a dangerous weapon, the character of the instrument, object or thing, the character of the wound produced, if any, and the manner in which the instrument, item or thing was used shall be determinative.

2. "Knife" shall mean any dagger, dirk, knife, or stiletto with a blade over three and one half inches in length, or any other dangerous instrument capable of inflicting cutting, stabbing, or tearing wounds.
3. "Knuckles and brass or iron knuckles" shall mean any instrument that consists of finger rings or guards made of a hard substance and that is designed, made, or adapted for the purpose of inflicting serious bodily injury or death by striking a person with a fist enclosed in the knuckles.
4. "Firearms" means pistols, revolvers, rifles, rifles having a barrel less than sixteen inches in length, shotguns, altered or modified shotguns less than twenty-four inches in overall length, and any device that is capable of being used as a weapon because it expels a projectile by some means of force.
5. A firearm or other weapon shall be deemed loaded when there is an unexpended cartridge, shell or projectile in the firing position except in the case of pistols and revolvers, in which case they shall be deemed loaded when the unexpended cartridge, shell or projectile to be fired is in the cylinder. [TCR 86-79]

3-737 Weapons offense; penalty.

1. It shall be unlawful to:
   A. Have a dangerous weapon in one's actual possession while being addicted to any narcotic drug; or after having been declared mentally incompetent; or while being intoxicated or otherwise under the influence of alcoholic beverages or other intoxicating substance, drug, or medicine; or while possessing the intent to unlawfully assault another; or while under the age of sixteen years and without the consent of one's parent or guardian.
   B. Carry a loaded firearm in a vehicle on a public road without lawful authority to do so; or to discharge any kind of firearm from a motor vehicle without lawful authority to do so, or to discharge a firearm from upon or across any public highway without lawful authority to do so.
2. This provision does not apply to the issuance of firearms to peace officers or temporary loan of pistols, revolvers, or any rifles for instruction under the immediate supervision of a parent or guardian or adult instructor.
3. Weapons offense is a Class III offense. [TCR 86-79, 89-87]

3-738 Aggravated weapons offense; penalty.

1. Except as provided in subsection (2) of this Section, any person who carries a weapon or weapons concealed on or about his/her person such as a revolver, pistol, bowie knife, dirk or knife with a dirk blade attachment, brass or iron knuckles, or any other deadly weapon, or threatens to use or exhibit the deadly weapon in a dangerous and threatening manner, or use a deadly weapon in a fight or quarrel commits the offense of carrying concealed weapons.
2. It shall be an affirmative defense that the defendant was engaged in any lawful business, calling or employment at the time he/she was carrying any weapon or weapons, and the circumstances in which such person was placed at the time were such as to justify a prudent person in carrying the weapon or weapons, for the defense of his/her person, property or family.
3. Aggravated weapon offense is a Class I offense. [TCR 86-79]

3-739 Using firearms to commit a **crime; penalty.**

1. Any person who uses a firearm, knife, brass or iron knuckles, or any other deadly weapon to commit any crime which may be prosecuted in a Tribal Court, or any person who unlawfully

possesses a firearm, knife, brass or iron knuckles, or any other deadly weapon during the commission of a crime which may be prosecuted in a Tribal Court commits the offense of using firearms to commit a crime.

2. Using firearms to commit a crime is a Class I offense. [TCR 86-79]

3-740 Dangerous devices; penalty.

1. It shall be unlawful to:
   A. Deliver or to cause to be delivered to any express, railway company or common carrier, or place in the mail or deliver to any person, or throw or place on or about the premises of another or in any place where another may be injured thereby, a dangerous device, knowing it to be such, unless the threatened person is informed of the nature thereof and its placement is for some lawful purpose; or
   B. Knowingly construct or contrive any dangerous device, or with the intent to injure another in his/her person or property, have a dangerous device in one's possession.
2. For purposes of this Section, a dangerous device is any box, package, contrivance, bomb, or apparatus containing or arranged with an explosive or acid or poisonous or inflammable substance, chemical, or compound, or knife, loaded firearm or other dangerous or harmful weapon or thing, constructed, contrived, or arranged so as to explode, ignite, or throw forth its contents, or to strike with any of its parts, unexpectedly when moved, handled, or opened or after the lapse of time or under conditions or in a manner calculated to endanger health, life, limb, or property.
3. Dangerous devices is a Class I offense. [TCR 86-79]

3-741 Fireworks offense; penalty.

1. It shall be unlawful to possess, buy, sell, distribute, transport, activate, ignite, or detonate or to allow any minor under one's physical or actual care, custody, or control to possess, buy, sell, distribute, transport, activate, ignite, or detonate any firecracker or other firework type device which is capable of or intended to explode, ignite, become self-propelled, give off any projectile, spark or other ignited or fused object or manifestation, or in any way give off sound or light by virtue of its burning or exploding.
2. It shall not be an offense under this Section:
   A. To use or ignite hand-held sparkler type devices in such a manner that they burn openly and singly or to use toy caps and cap guns singly and in the intended fashion; or
   B. To use or ignite fireworks at a patriotic, religious, or Tribal ceremony, gathering, or celebration in a safe manner provided that a permit to do so has been obtained from the Tribal Council or a lawfully authorized Tribal agency prior to the importation and use of such fireworks; or
   C. To buy, possess, use, or ignite fireworks between June 15 and July 5 inclusive of each year, provided that such devices are handled safely with regard to the safety of others and their property, and provided further, that minors under the age of twelve years of age buying, possessing, using, or igniting fireworks must be under the actual direct physical supervision of some responsible adult over eighteen years of age for this exception to apply; and
   D. To possess or sell fireworks between June 15and July 5**,** inclusive of each year provided that a permit to do so has been obtained from the Tribal Council or a lawfully authorized Tribal agency prior to such possession and sale, if that upon proof of a secure and safe facility, such permit may state a particular location for year round storage of fireworks by a business engaged in retail or wholesale of fireworks.

3. Fireworks is a Class III offense. [TCR 86-79, 89-87]

3-742 Inhaling or drinking certain compounds; penalty.

1. No person shall use, or induce or entice any person to breathe inhale or drink any compound, liquid or chemical containing acetate, acetone, benzene, butyl alcohol, cyclohexanone, ethyl acetate, ethyl alcohol, ethylene dichloride, ethylene tricworide, hexane, isopropanol, isopropyl alcohol, methyl alcohol, methyl cellosolve acetate, methyl ethyl ketone, methyl isobutyl ketone, pentachlorophenol, petroleum ether, toluene, toluol, trichloroathane, trichloroethylene, or any other substance for the purpose of inducing a condition of intoxication, stupefaction, depression, giddiness, paralysis, inebriation, excitement, or irrational behavior, or in any manner changing, distorting or disturbing the auditory, visual, mental or nervous processes. For the purposes of Sections 3-742 to 3-744, any such condition so induced shall be deemed an intoxicated condition.
2. Use of an inhalant or a compound as defined in this Section is a Class III offense. Inducement or enticement of a person to use an inhalant or a compound as defined in this Section is a Class II offense. [TCR 86-79, 89-87]

3-743 Selling and offering for sale certain compounds; use; knowledge of seller; unlawful.

1. No person shall knowingly sell or offer for sale, deliver or give to any person any compound, liquid or chemical or any other substance which will induce an intoxicated condition as defined in Section 3-742 when the seller, offerer or deliverer knows or has reason to know that such compound is intended for use to induce such condition.
2. Such inhalants used or kept in violation of this Section are hereby declared contraband.
3. Selling and offering for sale certain compounds is a Class II offense. [TCR 86-79]

3-744 Act, exceptions. The provisions of Sections 3-742 to 3-744 shall not apply to the use or sale of such substances, as defined in Sections 3-742 and 3-743, when such use or sale is administered or prescribed for medical or dental purposes, nor shall the provisions of Sections 3-742 to 3-744 apply to the use or sale of alcoholic liquors. [TCR 86-79]

3-745 [Reserved] [TCR 86-79, 89-87, 14-09]

3-746 Abandoning, or concealing a dead human body; penalty.

1. A person commits the offense of abandoning or concealing a dead human body if he/she:
   A. Throws away or abandons any dead human body, or any portion thereof, in any place other than a regular place for burial, or shall attempt to do the same or shall assist, initiate, or procure the same to be done;
   B. Receives, conceals, or disposes of any dead human body, or the remains thereof, knowing or having reason to know that the same had been dug up, disinterred or removed from its place of deposit or encourages another to do the same.
2. Abandoning or concealing a dead human body is a Class II offense. [TCR 86-79]

3-747 Concealing the death of another person; penalty. Any person who conceals the death of another person and thereby prevents a determination of the cause or circumstances of death commits a Class II offense. [TCR 86-79]

3-748 Intimidation by phone call; penalty; prima facie evidence.

1. A person commits the offense of intimidation by phone call if with intent to terrify, intimidate, threaten, harass, annoy, or offend he/she:
   A. Telephones another anonymously, whether or not conversation ensues, and disturbs the peace, quiet, and right of privacy of any person at the place where the calls are received; or
   B. Telephones another and uses indecent, lewd, lascivious, or obscene language or suggests any indecent, lewd or lascivious act; or
   C. Telephones another and threatens to inflict injury to any person or to the property of any person; or
   D. Intentionally fails to disengage the connection; or
   E. Telephones another and attempts to extort money or other thing of value from any person.
2. The use of indecent, lewd, or obscene language or the making of a threat or lewd suggestion shall be prima facie evidence of intent to terrify, intimidate, threaten, harass, annoy, or offend.
3. The offense shall be deemed to have been committed either at the place where the call was made or where it was received.
4. Intimidation by phone call is an infraction. [TCR 86-79, 89-87]

3-749 Interfering with a public service company; penalty.

1. A person commits the offense of interfering with a public service company if he/she willfully and purposely interrupts or interferes with the transmission of telegraph or telephone messages or the transmission of light, heat and power on this reservation.
2. Interfering with a public service company is a Class III offense. [TCR 86-79]

3-750 Maintaining a nuisance; penalty; abatement or removal.

1. A person commits the offense of maintaining a nuisance if he/she erects, keeps up or continues and maintains any nuisance to the injury of any part of the residents of this reservation.
2. The erecting, continuing, using, or maintaining of any building, structure, or other place for the exercise of any trade, employment, manufacture, or other business which, by occasioning noxious exhalation, noisome or offensive smells, becomes injurious and dangerous to the health, comfort, or property of individuals or the public; the obstructing or impeding, without legal authority, of the passage of any navigable river, harbor, or collection of water; or the corrupting or rendering unwholesome or impure of any water course, stream, or water; or unlawfully diverting any such watercourse from its natural course or state to the injury or prejudice of others, and the obstructing or encumbering by fences, building, structures or otherwise of any of the public highways, or streets or alleys of any city or village, shall be deemed nuisances.
3. A person guilty of erecting, continuing, using, maintaining or causing any such nuisance shall be guilty of a Class III offense.
4. The Court, in case of conviction of such offense shall order every such nuisance to be abated or removed. [TCR 86-79]

3-751 Disturbing the peace; penalty.

1. Any person who shall intentionally disturb the peace and quiet of any person, family, or neighborhood commits the offense of disturbing the peace.
2. Disturbing the peace is a Class III offense. [TCR 86-79]

3-752 Telecommunications violations; penalty. It shall be unlawful for any person to:

1. Willfully and without lawful authority cut, break, tap or make connection with any telegraph or telephone line, wire, cable or instrument, or read or copy, in any unauthorized manner, any message, communication or report passing over it, on this reservation; or
2. Willfully prevent, obstruct or delay, by any means or contrivance whatsoever the sending, transmission, conveyance or delivery on this reservation of any authorized message, communication or report by or through any telegraph or telephone line, wire or cable under the control of any telegraph or telephone company doing business on this reservation; or
3. Agree with, employ or conspire with any person or persons to unlawfully do or perform, or cause to be done, any of the above-mentioned acts; or
4. Occupy, use a line, or knowingly permit another to occupy or use a line, room, table, establishment or apparatus to unlawfully do or cause to be done any of the above-mentioned acts.
5. Telecommunications violation is a Class III offense. [TCR 86-79]

3-753 Animal, cruel mistreatment, cruel neglect, and abandon; defined. As used in Section 3-754, unless the context otherwise requires:

1. Animal shall mean a domesticated living creature and a wild living creature previously captured. Animal does not include an uncaptured wild creature or a wild creature whose capture was accomplished by conduct at issue under Section 3-754;
2. Cruel mistreatment shall mean every act or omission which causes, or unreasonably permits the continuation of, unnecessary or unjustifiable pain or suffering;
3. Cruel neglect shall mean failure to provide food, water protection from the elements, opportunity to exercise, or other care normal, usual, and proper for an animal's health and well-being; and
4. Abandon shall mean the leaving of an animal by its owner or other person responsible for its care or custody without making effective provisions for its proper care. [TCR 86-79]

3-754 Cruelty to animals; penalty; authorized or permitted conduct.

1. A person commits cruelty to animals if, except as otherwise authorized by law or recognized by law or recognized traditional Indian custom, he/she intentionally or recklessly:
   A. Subjects any animal to cruel mistreatment; or
   B. Subjects any animal in his/her custody to cruel neglect; or
   C. Wantonly kills or injuries any animal belonging to another; or
   D. Abandons any animal.
2. Cruelty to animals is a Class III offense if it involves a violation of subsections (A), (B), or (C); a violation of subsection (D) is an infraction. [TCR 86-79, 90-24]

3-755 Livestock offense; penalty.

1. It shall be unlawful for a person to:
   A. Knowingly or recklessly refuse or fail to mark or brand his/her livestock when such is required in the interest of livestock identification or directed by Tribal or government officials; or
   B. Alter, obliterate, or remove a brand or mark, or misbrand or mismark livestock with a purpose to deceive another for any reason; or
   C. Knowingly permit livestock to graze or trespass on the property of another or of the Tribe without permission to do so in excess of permitted time or amount; or

D. Knowingly fail to treat or dispose of a sick animal where there is a substantial danger of infecting other animals; or

E. Make a false report of livestock owned.

2. Except in cases in which the owner or person having custody of livestock believed to be in violation of this Section cannot be found, for subsections (A), (B), (C), (D) or (E), set forth above, no conviction may be sustained unless the owner or person having custody of the livestock involved is given forty eight hours written notice of his alleged violation.

3. Livestock found to be in violation of this Section may be impounded without prior notice to the owner if a Court so orders upon receipt of evidence that such animals seriously threaten the property of the Tribe or another or the health of other livestock and that immediate action is necessary to protect such interests from serious harm. A reasonable fee for the care of such animals may be collected prior to their release.

4. A livestock offense which is a violation of subsection (A), (C) or (E) shall be an infraction. Violation of subsection (B) of this Section shall be a Class II offense. A violation of subsection (D) or (E) of this Section is a Class III offense.

5. Livestock handled or kept in violation of this Section are hereby declared to be contraband. [TCR 86-79, 89-87]

3-756 Waters offense; penalty.

1. It shall be unlawful to:

A. Interfere with or alter the flow of water in any stream, river, ditch, or water system without lawful authority to do so, or express written authority of the Winnebago Tribe of Nebraska Tribal Council, and in violation of the right of any person; or

B. Knowingly break, injure, alter or destroy any bridge, dam, levee, embankment, reservoir, water tank, water line, or other structure intended to create hydraulic power or pressure or direct the flow of water, without lawful authority to do so; or

C. Pollute or befoul any water in any of the following ways:

i. Construct or maintain a corral, sheep pen, goat pen, stable, pig pen, chicken coop, or other offensive yard or outhouse where the waste or drainage therefrom shall flow directly into the waters of any stream, well, spring, or source of water used for domestic purposes; or

ii. Deposit, pile, unload or leave any manure heap, rubbish, or the carcass of any dead animal where the waste or drainage therefrom will flow directly into the waters of any stream, well, spring or source of water used for domestic purpose; or

iii. Construct, establish, or maintain any corral, yard, vat, pond, camp, or bedding place for the shearing, dipping, washing, storing, herding, holding or keeping of livestock in such proximity to a stream, or other source of water used for domestic purposes or which flows through a city or town, so that the waste, refuse or filth therefrom find their way into said source of water; or

iv. Knowingly cause or allow any substance harmful or potentially harmful to human life to enter into a source of water used for domestic purposes.

2. Waters offense is a Class II offense. [TCR 86-79, 89-87]

3-757 Assault of a Human Embryo or Fetus; terms defined; limitations.

1. As used in Sections 3-757 to 3-760, unless the context otherwise requires:

A. "Human embryo" or "fetus" shall mean any individual of the human species from fertilization until birth.
B. "Person" shall not include the pregnant woman.

2. Nothing contained in this Section, arising from the killing of an embryo or fetus, shall be construed to permit the prosecution:
   A. Of any person for conduct relating to an abortion for which the consent of the pregnant woman, or a person authorized by law to act on her behalf, has been obtained or for which consent is implied by law;
   B. Of any person for any medical treatment of the pregnant woman or her embryo or fetus; or
   C. Of any woman with respect to her embryo or fetus; except as otherwise provided by law. [TCR 14-89]

3-758 Assault of a Human Embryo or Fetus in the first degree; penalty.

1. A person commits the offense of assault of a human embryo or fetus in the first degree if he/she during the commission of any criminal assault on a pregnant woman, intentionally or knowingly causes serious bodily injury to her human embryo or fetus.
2. Assault of a human embryo or fetus in the first degree is a Class I offense. [TCR 14-89]

3-759 Assault of a Human Embryo or Fetus in the second degree; penalty.

1. A person commits the offense of assault of a human embryo or fetus in the second degree if he/she, during the commission of any criminal assault on a pregnant woman, recklessly causes bodily injury to her human embryo or fetus.
2. Assault of a human embryo or fetus in the second degree is a Class II offense. [TCR 14-89]

3-760 Assault of a Human Embryo or Fetus in the third degree; penalty.

1. A person commits the offense of assault of a human embryo or fetus in the third degree if he/she, during the commission of any criminal assault on a pregnant woman, recklessly attempts to cause bodily injury to her human embryo or fetus, whether or not such injury results to her human embryo or fetus.
2. Assault of a human embryo or fetus in the third degree is a Class III offense. [TCR 14-89]

3-761 Indecent liberties; penalty

3. Any person not a minor commits the offense of indecent liberties if he/she, with lascivious intent:
   C. Knowingly causes another person to have sexual contact, as defined in section 3-417, with him or her or another without that person's consent; or
   D. Knowingly engages in lewd fondling or touching of him or herself in the presence of another person with the intent to arouse or satisfy the sexual desires of the other person, the offender or another, when that person is under the age of eighteen (19) or is deemed incapable of consent, without regard to whether that person consents; or
   E. Knowingly engages in lewd fondling or touching the body of another person who is under the age of eighteen (18) or is deemed in capable of consent, with the intent to arouse or satisfy the sexual desires of the person, the offender or another, without regard to whether that person consents; or
   F. Solicits a person who is under the age of eighteen (18) or is deemed incapable of consent to engage in any lewd fondling or touching of another with the intent to arouse or satisfy the

sexual desires of the person, the offender or another, without regard to whether that person consents.

4. A person is deemed incapable of consent if that person is impaired by reason of mental illness, mental incapacity, physical illness or disability, advanced age or other causes to the extent that the person lacks sufficient understanding or capacity to make, communicate or carry out reasonable decisions concerning his or her well-being.
5. In prosecuting violations of paragraph (1) of this section, the Tribe does not need to prove that the defendant knew the person was under the age of eighteen (18) or was incapable of giving consent.
6. In prosecuting violations of paragraph (1) of this section, it is a defense, which the defendant must establish by a preponderance of the evidence, that the defendant believed that the other person had attained eighteen (18) years of age or that the other person was capable of consent.
7. Indecent liberties is a Class III offense. [TCR 14-88]

3-762 Video Recording and Distribution of Criminal Assaults

8. A person commits the offense of video recording and distribution of criminal assaults if he/she:
   A. Intentionally or knowingly films, records, or causes to be recorded a moving image to be displayed on a computer or other video screen that depicts a criminal assault; and
   B. Intends that such image will be distributed, including, but not limited to distribution by phone, social networking websites, user-generated content websites, and electronic mail, to another person other than law enforcement personnel for law enforcement purposes.
9. This section shall not apply to video recordings made by:
   A. Law enforcement personnel for law enforcement purposes; or
   B. Surveillance cameras used in the ordinary course of business.
10. Video Recording and Distribution of Criminal Assault is a Class III offense. [TCR 14-87]

TITLE 3
ARTICLE 8
CONTROLLED SUBSTANCES ACT
(As revised October 16, 2013)

3-801 Definitions.
3-802 Prohibition of sales, transport, import, export or possession of drug paraphernalia or drug manufacturing equipment.
3-803 Narcotics revolving fund.
3-804 Future controlled substances included.
3-805 Nomenclature in schedules.
3-806 Schedule I characteristics.
3-807 Schedule II characteristics.
3-808 Schedule III characteristics.
3-809 Schedule IV characteristics.
3-810 Schedule V characteristics.
3-811 Schedule I.
3-812 Schedule II.
3-813 Schedule III.
3-814 Schedule IV.
3-815 Schedule V.
3-816 Seizure without warrant; forfeitures; disposition; evidence; court costs and expenses.
3-817 School property; distribution; dispensing or possession.
3-818 Prohibited acts; penalties.
3-819 Prohibited acts; fraud, deceit.
3-820 Certain substances causing intoxication; exemptions; penalties.
3-821 Endeavor and conspiracy.
3-822 General penalty clause.
3-823 Additional penalties.
3-824 Severability.
3-825 Possession of a dangerous drug; penalty
3-826 Dangerous drug offense; penalty

3-801 Definitions. As used in the Controlled Substances Act, of this Title:

1. "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion or any other means to the body of a patient or research subject by:
   A. A practitioner (or in his presence, by his/her authorized agent); or
   B. The patient or research subject at the direction and in the presence of a practitioner.
2. "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, dispenser, but does not include a common or contract employee of the carrier or warehouse keeper, carrier, public warehouse keeper.
3. "Control" means to add a drug, or other substance or immediate precursor to a schedule under this Article, whether by transfer from another schedule or otherwise.
4. "Controlled substance" means a drug, substance or immediate precursor in Schedules I through V of this Article 8. "Controlled substance" shall not include distilled spirits, wine, malt beverages, tobacco, or any non-narcotic substance if such substance may be included under the Federal Food, Drug and Cosmetic Act and the laws of this reservation, be lawfully sold over the counter without a prescription.
5. "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name or other identifying marks, imprint, number or device or any likeness thereof of a manufacturer, distributor or dispenser other than the person or persons who in fact manufactured, distributed or dispensed such substance and which thereby falsely purports or is represented to be the product of or to have been distributed by, such other manufacturer, distributor or dispenser.
6. "Deliver" or "Delivery" means the actual, constructive or attempted transfer of a controlled substance or a listed chemical whether or not there exists an agency relationship.

7. "Dispense" shall mean to deliver a controlled substance to an ultimate user or a research subject pursuant to the lawful order or prescription of a physician, dentist, veterinarian, or other medical practitioner licensed under the laws of this state to prescribe drugs, including the packaging, labeling, or compounding necessary to prepare the substance for such delivery. "Dispenser" shall mean the apothecary pharmacist, or other practitioner, duly licensed, who dispenses a controlled substance to an ultimate user or a research subject.
8. "Distribute" means to deliver other than by administering or dispensing a controlled substance.
9. "Distributor" means a person who distributes a controlled substance.
10. "Drug" means articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them, substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in human beings or animals; and substances intended for use as a component of any article specified in this paragraph; but shall not include devices or their components, parts or accessories.
11. "Drug dependent person" means a person using a controlled substance and who is in a state of psychic or physical dependence, or, both, arising from administration of that controlled substance on a continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects, or to avoid the discomfort of its absence.
12. "Drug manufacturing equipment" means any equipment, product, or material of any kind which is primarily intended or designed for use in planting, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packing, repackaging, or storing a controlled substance, possession of which is unlawful under the Winnebago Tribal Code. It includes, but is not limited to:
    A. Kits used or intended for use in planting, propagating, cultivating, growing or harvesting of any species of any plant which a controlled substance can be derived.
    B. Kits used or intended for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances.
    C. Isomerization devices used or intended for use in increasing the potency of any species of plant which is a controlled substance.
    D. Testing equipment used or intended for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances.
    E. Scales and balances used or intended for use in weighing or measuring controlled substances.
    F. Diluents and adulterants, such as quinine hydrochloride, manitol, mannite, dextrose and lactose, used or intended for use in cutting controlled substances.
    G. Separation gins and sifters used or intended for use in removing twigs and seeds from or in otherwise cleaning or refining, marijuana.
    H. Blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding controlled substances.
    I. Capsules, balloons, envelopes and other containers used or intended for use in packaging small quantities of controlled substances.
13. "Drug paraphernalia" means any equipment, product, or material of any kind which is primarily intended or designed for use in injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance, possession of which is unlawful under the Winnebago Tribal Code. It includes but is not limited to:
    A. Containers and other objects used or intended for use in parenterally injecting controlled substance into the human body.

B. Hypodermic syringes, needles and other objects used or intended for use in parenterally injecting controlled substances into the human body.

C. Objects used, intended for use or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:

i. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;

ii. Water pipes;

iii. Carburetion tubes and devices;

iv. Smoking and carburetion masks;

v. Roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

vi. Miniature cocaine spoons and cocaine vials;

vii. Chamber pipes;

viii. Carburetor pipes; Electric pipes; Air-driven pipes;

ix. Chillums;

x. Bongs;

xi. Ice pipes or chillers;

xii. Wired cigarette papers; and

xiii. Cocaine freebase kits.

14. "Imitation controlled substance" means a substance that is not a controlled substance, which by dosage unit appearance, color, shape, size, marking or by representations made would lead a reasonable person to believe that the substance is a controlled substance.

15. "Immediate precursor" means a substance which is found to be and by regulation designated as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used, or likely to be used, in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit such manufacture.

16. "Isomer" means the optical isomer, except as used in subsection C of section 3-804 of this article and paragraph 4 of subsection A of Section 3-806 of this Article, "Isomer" means the optical, positional or geometric isomer.

17. "Manufacture" means the production, preparation, propagation, compounding or processing of a controlled substance, either directly or indirectly by extraction from substances of natural or synthetic origin, or independently by means of chemical synthesis. "Manufacturer" includes any person who packages, repackages or labels any container of any controlled substance, except practitioners who dispense or compound prescription orders for delivery to the ultimate consumer.

18. "Marijuana" means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin, but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of such plant which is incapable of germination.

19. "Medical purpose" means an intention to utilize a controlled substance for physical or mental treatment, diagnosis, or for the prevention of a disease condition not in violation of any Tribal, state or federal law and not for the purpose of physiological or psychological dependence or other abuse.

20. "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

A. Opium, opium poppy and poppy straw, coca leaves and opiates.

B. A compound, manufacture, salt, derivative or preparation of opium, coca leaves or opiates.
C. Cocaine, its salts, optical and geometric isomers and salts of isomers.
D. Ecgonine, its derivatives, their salts, isomers and salts of isomers.
E. A substance, and any compound, manufacture, salt, derivative or preparation thereof, which is chemically equivalent to or identical with any of the substances referred to in subparagraphs a. through d. of this subdivision, except that the words "narcotic drug" as used in this title shall not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine, or isoquinoline alkaloids of opium.

21. "Opiate" means any substance having an addiction-forming or addiction sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability. It does not include the dextrorotatory isomer of 3-methoxy-n-methyl-inorphimn and its salts. It does include its racemic and levorotatory forms.
22. "Opium poppy" means the plant of the species Papaver sonmiferam L., except the seeds thereof.
23. "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.
24. "Practitioner" means: A physician, dentist, podiatrist, veterinarian, pharmacist, pharmacy or hospital, scientific investigator or other person licensed, registered or otherwise permitted to distribute, dispense, or prescribe, conduct research with respect to, use for scientific purposes or administer a controlled substance in the course of professional practice or research in this reservation.
25. "Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.
26. "Synthetic controlled substance" means a substance that is not a controlled substance, but a substance that produces a like, or similar physiological or psychological effect of the human central nervous system that currently has no accepted medical use in treatment in the United States and has a potential for abuse.
27. "Tetrahydrocannabinols" means all substances that have been chemically synthesized to emulate the tetrahydrocannabinols of marijuana.
28. "Ultimate consumer" means a person who lawfully possesses a controlled substance for his/her own use or for the use of a member of his/her household or for an animal owned by him/her or by a member of his/her household. [TCR 86-79, 14-09]

3-802 Prohibition of sales, transport, import, export, or possession of drug paraphernalia or drug manufacturing equipment.

1. It is unlawful for any person:
   A. to use, or to possess with intent to use, drug paraphernalia or drug manufacturing equipment to manufacture, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of the Controlled Substances Act, Sections 3-801, et seq.;
   B. sell or offer for sale drug paraphernalia or drug manufacturing equipment knowing, or under circumstances in which one reasonably should know, that it will be used to manufacture, inject, ingest, or inhale or otherwise be used to introduce into the human body a controlled substance in violation of the Controlled Substances Act, Sections 3-801, et seq.;
   C. to use the mails or any other facility of commerce to transport drug paraphernalia or drug manufacturing equipment knowing, or under circumstances in which one reasonably should know, that it will be used to manufacture, inject, ingest, or inhale or otherwise be used to introduce into the human body a controlled substance in violation of the Controlled Substances Act, Sections 3-801, et seq.; or

D. to import or export drug paraphernalia or drug manufacturing equipment to or from the exterior boundaries of the reservation knowing, or under circumstances in which one reasonably should know, that it will be used to manufacture, inject, ingest, or inhale or otherwise be used to introduce into the human body a controlled substance in violation of the Controlled Substances Act, Sections 3-801, et seq.; or

2. Penalties.
   A. Anyone convicted of an offense under subsection 1(A), of this Section shall be guilty of a Class III offense.
   B. Anyone convicted of an offense under subsection 1(B), 1(C), or 1(D) of this Section shall be guilty of a Class II offense.
3. Seizure and forfeiture. Any drug paraphernalia or drug manufacturing equipment involved in any violation of subsection (a) of this Section shall be subject to seizure and forfeiture upon the conviction of a person for such violation. Any such paraphernalia or manufacturing equipment shall be confiscated by the Winnebago Police Department, who may order such paraphernalia or manufacturing equipment destroyed or may authorize its use for law enforcement or educational purposes by Tribal, federal, state, or local authorities.
4. Matters considered in determination of what constitutes drug paraphernalia or drug manufacturing equipment. In determining whether an item constitutes drug paraphernalia or drug manufacturing equipment, in addition to all other logically relevant factors, the following may be considered:
   A. instructions, oral or written, provided with the item concerning its use;
   B. descriptive materials accompanying the item which explain or depict its use;
   C. national and local advertising concerning its use;
   D. the manner in which the item is displayed for sale;
   E. whether the owner, or anyone in control of the item, is a legitimate supplier of like or related items to the community, such as licensed distributor or dealer of tobacco products;
   F. direct or circumstantial evidence of the ratio of sales of the item(s) to the total sales of the business enterprise;
   G. the existence and scope of legitimate uses of the item in the community; and
   H. expert testimony concerning its use.
5. Exemptions. This Section shall not apply to:
   A. any person authorized by Tribal, local, state or federal law to manufacture, possess, or distribute such items; or
   B. any item that, in the normal lawful course of business, is imported, exported, transported, or sold through the mail or by any other means, and traditionally intended for use with tobacco products, including any pipe, paper, or accessory. [TCR 86-79, 14-09]

3-803 Narcotics revolving fund. There is hereby created a revolving fund for the control of narcotics and dangerous drugs to be designated the "Narcotics Revolving Fund." The fund shall be a continuing fund not subject to fiscal year limitations, and shall consist of any monies received from the sale of surplus and confiscated property, fees and receipts collected. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Winnebago Police Department for the control of narcotics and illegal drugs. [TCR 86-79, 14-09]

3-804 Future controlled substances included. Any substances not listed in the following schedules which are subsequently determined to be "controlled substances" are included as controlled substances in this Article. [TCR 86-79]

3-805 Nomenclature in schedules. The schedules provided by this Article include the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated.

A. Establishment. There are established five schedules of controlled substances, to be known as schedules I, II, III, IV, and V. Such schedules shall initially consist of the substances listed in this Section. The schedules established by this Section shall be updated and republished on a semiannual basis during the two year period beginning one year after October 27, 1970, and shall be updated and republished on an annual basis thereafter.

B. Placement on schedules; findings required. Except where control is required by United States obligations under an international treaty, convention, or protocol, in effect on October 27, 1970, and except in the case of an immediate precursor, a drug or other substance may not be placed in any schedule unless the findings required for such schedule are made with respect to such drug or other substance. [TCR 86-79]

3-806 Schedule I characteristics. Schedule I includes substances with the following characteristics:

1. High potential for abuse.
2. No accepted medical use in the United States; and the drug lacks accepted safety for use in treatment under medical supervision. [TCR 86-79]

3-807 Schedule II characteristics. Schedule II includes substances with the following characteristics:

1. High potential for abuse.
2. Currently accepted medical use in the United States, or currently accepted medical use with severe restrictions.
3. The abuse of the substance may lead to severe psychological or physical dependence. [TCR 86-79]

3-808 Schedule III characteristics. Schedule III includes substances with the following characteristics:

1. A potential for abuse less than the substances listed in Schedule I and II.
2. Currently accepted medical use in treatment in the United States.
3. Abuse may lead to moderate or low physical dependence or high psychological dependence. [TCR 86-79]

3-809 Schedule IV characteristics. Schedule IV includes substances with the following characteristics:

1. Low potential for abuse relative to substances listed in Schedule III.
2. Currently accepted medical use in treatment in the United States.
3. Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substance listed in Schedule III. [TCR 86-79]

3-810 Schedule V characteristics. Schedule V includes Substances with the following characteristics:

1. Low potential for abuse relative to the controlled substances listed in Schedule IV.
2. Currently accepted medical use in treatment in the United States.

3. Limited physical dependence or psychological dependence liability relative to the controlled substances listed in Schedule IV. [TCR 86-79]

3-811 Schedule I.

A. Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

1. Acetylmethadol.
2. Allylprodine.
3. Alphacetylmethadol.
4. Alphamedprodine.
5. Alpbamethadol.
6. Benzethidine.
7. Betacetylmethadol.
8. Betameprodine.
9. Betamethadol.
10. Betaprodine.
11. Clonitazene.
12. Dextromoramide.
13. Diampromide.
14. Diethylthiambutene.
15. Difenoxin.
16. Dimenoxadol.
17. Dimepheptanol.
18. Dimethylthiambutene.
19. Dioxaphetyl butyrate.
20. Dipipanone.
21. Ethyhnethylthiambutene.
22. Etonitazene.
23. Etoxeridine.
24. Furethidine.
25. Hydroxypethidine.
26. Ketobemidone.
27. Levomoramide.
28. Levophcnacylmorphan.
29. Morpheridine.
30. Noracymethadol.
31. Norievorphanol.
32. Normethadone.
33. Norpipanone.
34. Phenadoxone.
35. Phenampromide.
36. Phenomorphan.
37. Phenoperidint.
38. PiritmWde.
39. Proheptazine.
40. Properidine.
41. Racemoranide.

42. Trimeperidine.

B. Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

1. Acetorphine.
2. AcetyldihydroCodeine.
3. Benzylmorphine.
4. Codeine rnethylbromide.
5. Codeine-n-oxide.
6. Cyprenorphine.
7. Desomorphine.
8. Dihydromorphine.
9. Etorphine.
10. Heroin.
11. Hydromorphinol.
12. Methyldesorphine.
13. Methylhydromorphine.
14. Morphine rnethylbromide.
15. Morphine methylsulfonate.
16. Morphine-n-oxide.
17. Myrophine.
18. NicoCodeine.
19. Nicomorphine.
20. Normorphine.
21. Phoclodine.
22. Thebacon.

C. Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these isomers salts, isomers and salts of isomers is possible within the specific chemical designation:

1. 3, 4-methylenedioxy amphetamine.
2. 5-methoxy-3, 4-methylenediaxy amphetamine.
3. 3,4,5-trimethozy amphetamine.
4. Bufotenine.
5. Diethyltryptamine.
6. Dimethyltryptamine.
7. 4-methyl-2, 5-dimethoxyamphetamine.
8. Ibogaine.
9. Lysergic acid diethylamide.
10. Marijuana.
11. Mescaline.
12. N-ethyl-3-piperdyl benzilate.
13. N-methyl-3-piperidyl benzilate.
14. Psilocybin.
15. Psilocyn.
16. Tetrahydocannabinols.
17. 2, 5 dimenthoxyamphetimine.
18. 4 Bromo-2, 5-dimethoxyamphetamine.
19. 4 methoxyamphetamine.

20. Cyclohexamine.
21. Thiphene Analog of Phencyclidine. Also known as 1-(l-(2-thienyl) cyclohexl) piperidine; 2-Thienyl Analog of Phencyclidine; TPCP, TCP.
22. Phencyclidine (PCP).
23. Pyrrolidine Analog for Phencyclidine. Also known as 1-(Phenyclyclohexyl)-Pyrrolidine, PCPy, PHP.

D. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having stimulant or depressant effect on the central nervous system:
1. Fenethylline.
2. Mecloqualone.
3. N-ethylamphetamine.
4. Methaqualone. [TCR 86-79]

3-812 Schedule II. The controlled substances listed in this Section are included in Schedule II.

A. Any of the following substances except those narcotic drugs listed in other schedules whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:
1. Opium and opiate, and any salt, compound derivative, or preparation of opium or opiate.
2. Any salt, compound, isomer derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph 1, but not including the isoquinoline alkaloids of opium.
3. Opium poppy or poppy straw.
4. Coca leaves except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed; cocaine, its salts, optical and geometric isomers and salts of isomers; ecgonine, its derivatives, their salts, isomers and salts of isomers; or any compound, mixture or preparation which contains any quantity of any of the substances referred to in this paragraph.

B. Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, when the existence of these isomers esters, ethers and salts is possible within the specific chemical designation:
1. Alphaprodine.
2. Anileridine.
3. Bezitramide.
4. DihydroCodeine.
5. DihyroCodeine.
6. Fentanyl.
7. Isomethadone.
8. Levomethorphan.
9. Levorphanol.
10. Metazocine.
11. Methadone.
12. Methadone-Intermediate, 4-cyano-2-Dimethllamino-4, 4-diphenyl butane.
13. Moramide-Intermediate, 2-methyl-3morpholino-1, 1-diphenyl-propane carboxylic acid.
14. Pethidine. Meperidine.
15. Pethidine-Intermediate-A, 4-cyano-l-methyl-4-phenylpiperidine.
16. Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate.
17. Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.

18. Phenazocine.
19. Piminodine.
20. Racemethorphan.
21. Racemorphan.
22. Etorphine hydrochloride salt only.
23. Alfentanil hydrochloride.

C. Any substance which contains any quantity of:
1. Methamphetamine, including its salts, isomers, and salts of isomers.
2. Amphetamine, its salts, optical isomers, and salts of its optical isomers.

D. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having stimulant or depressant effect of the central nervous system:
1. Phenmetrazine and its salts.
2. Methylphenidate.
3. Amobarbital.
4. Pentobarbital.
5. Secobarbital.
6. Tetrahydrocannabinols. [TCR 86-79]

3-813 Schedule III. The controlled substances listed in this Section are included in Schedule III:

A. Unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following substance or any other substance having potential for abuse associated with a stimulant or depressant effect of the central nervous system:
1. Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid unless specifically excepted or unless listed in another schedule.
2. Chlorhexadol.
3. Glutethimide.
4. Lysergic acid.
5. Lysergic acid amide.
6. Methyprylon.
7. Sulfondiethylmethane.
8. Sulfonmethane.
9. Sulfomethane.
10. Benzephentarnine and its salts.
11. Chlorphentermine and its salts.
12. Clortermine.
13. Mazindol.
14. Phendimetrazine.
15. Phenlacetone (P2P).
16. 1 -Phenycyclohexylamine.
17. 1- Piperidinocychexanecarbo nitrile (PCC).

B. Nalorphine.

C. Unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:
1. Not more than one and eight-tenths (1.8) grams of Codeine or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

2. Not more than one and eight-tenths (1.8) grams of Codeine or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
3. Not more than three hundred (300) milligrams of dihydroCodeinone or salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with a fourfold or greater quantity of an isoquix)oline alkaloid of opium;
4. Not more than three hundred (300) milligrams of dihydroCodeinone or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;
5. Not more than one and eight-tenths (1.8) grams of dihydroCodeine or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;
6. Not more than three hundred (300) milligrams of ethylmorphine or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts;
7. Not more than five hundred (500) milligrams of opium per one hundred (100) milliliters or per one hundred (100) grams, or not more than twenty-five (25) milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;
8. Not more than fifty (50) milligrams of morphine or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams with one or more active, non-narcotic ingredients in recognized therapeutic amounts. [TCR 86-79]

3-814 Schedule IV. The controlled substances listed in this Section are included in Schedule IV:

A. Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential. for abuse associated with a stimulant or depressant effect on the central nervous system:
1. Chloral betaine.
2. Chloral hydrate.
3. Ethchlorvynol.
4. Ethinamate.
5. Meprobamate.
6. Paraldehyde.
7. Petrichloral.
8. Diethylpropion.
9. Phentermine.
10. Pemoline.
11. Chlordiazepoxide.
12. Chlordiazepoxide and its salts, but not including cloradiazepoxide hydrochloride and clidinium bromide or chlordiazepoxide and water-soluble esterified estrogens.
13. Diazepam.
14. Oxazepam.
15. Clorazepate.
16. Flurazepam and its salts.
17. Clorazepam.
18. Barbital.
19. Mebutamate.
20. Methohexital.
21. Methylphenobarbital.

22. Phenobarbital.
23. Fenflurarnine.
24. Pe-ntaxocine.
25. Dextropropoxyphene.
26. Butorphanol.
27. Alprazolam.
28. Halazepam.
29. Lorazepam.
30. PrazePam.
31. Ternazepam.
32. Triazolam.
33. Methandrostellolone.
34. Stanozolol.
35. Ethylestrenol.
36. Nandrolene pbenpropionate.
37. Nandrolone deconoate.
38. Testosterone propionate.
39. Chlorionic gonadotropin.

B. In addition to the anabolic steroids listed in paragraphs 33 through 39 of subsection A of this Section, "anabolic steroids" shall include any salt, optical and geometric isomers, and salts of isomers, compound, or derivative include any salt, optical and geometric , or derivative which is a chemical analog to any of the substances listed in paragraphs 33 through 39 of subsection A of this Section. [TCR 86-79]

3-815 Schedule V. The controlled substances listed in this Section are included in Schedule V:

A. Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one of more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone.
   1. Not more than two hundred (200) milligrams of Codeine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) gram.
   2. Not more than one hundred (100) milligrams of dihydroCodeine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams.
   3. Not more than one hundred (100) milligrams of ethylmorphine, or any of it salts, per one hundred (100) milliliters or per one hundred (100) gram,;.
   4. Not more than two and five-tenths (2.5) milligrams of diphenoxylate and not less than twenty-five (25) micrograms of atropine sulfate per dosage unit.
   5. Not more than one hundred (100) milligrams of opium per one hundred (100) milliliters or per one hundred (100) grams. [TCR 86-79]

3-816 Seizure without warrant; forfeitures; disposition; evidence; court costs and expenses.

1. The following shall be seized without warrant by an officer of the Winnebago Police Department or by any other peace officer and the same shall be subject to forfeiture:
   A. All controlled substances which have been manufactured, distributed, dispensed, acquired, or possessed in violation of this Article 8;

B. All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, administering, delivering, importing, or exporting any controlled substance in violation of this Article 8;

C. All property which is used, or intended for use, as a container for property described in subsections (a) and (b) of this Section;

D. All drug paraphernalia and all drug manufacturing equipment defined in Section 3-802;

E. All books, records, and research, including but not limited to formulas, microfilm, tapes, and data, which are used, or intended for use, in violation of this Article;

F. All conveyances including but not limited to aircraft, vehicles, or vessels which are used, or intended for use, in transporting any controlled substance with intent to manufacture, distribute, deliver, dispense, export, or import such controlled substance in violation of this Article.

2. Any property described in subsection (1)(f) of this Section which is used, or intended for use to transport any property described in subsection (1)(a) or (b) of this Section is hereby declared to be a common nuisance, and any peace officer having probable cause to believe that such property is so used, or intended for such use, shall make a search thereof with or without a warrant.

3. All money that a law enforcement agency proves was furnished by such agency shall be returned to the agency. All property seized without a search warrant shall not be subject to a replevin action and:

A. All property described in subsections (1)(a) to (1)(e) of this Section shall be kept by the law enforcement agency which employs the officer who seized such property for so long as it is needed as evidence in any trial; and

B. When no longer required as evidence, all property described in subsection (1)(e) of this Section shall be disposed of on order of the Tribal Court, in such manner as the Court in its sound discretion shall direct, and all property described in. subsection (1)(a), (b), (c), and (d) of this Section, that has been used or is intended to be used in violation of this Article, when no longer needed, its evidence shall be destroyed by the law enforcement agency holding the same except that the law enforcement agency may keep a small quantity of the property described in subsections (1)(a), (b), (c), and (d) for training purposes or use in investigations. Any large quantity of property described in subsections (1)(a), (b), (c), or (d) of this Section, whether seized under a search warrant or validly seized without a warrant, may be disposed of on order of the Tribal Court in such a manner as the Court in its sound discretion shall direct. Such an order may be given only after a proper laboratory examination and report of such property has been completed and after a hearing has been held by the Court after notice to the defendant of the proposed disposition of the property. The findings in such Court order as to the nature, kind, and quantity of property so disposed of may be accepted as evidence at subsequent court proceeding in lieu of the property ordered destroyed by the Court order.

4. When any property described in subsection (1)(f) or (g) of this Section is seized, the person seizing the same shall cause to be filed within ten days thereafter, in the Tribal Court in which seizure was made, petition for disposition of such property. The proceedings shall be brought in the name of the Tribe by the Tribal prosecutor of the jurisdiction in which the property was seized. The petition shall describe the property, state the name of the owner if known, allege the essential elements of the violation which is claimed to exist, and conclude with a prayer for disposition. The Tribal prosecutor shall have a copy of the petition served upon the owner of or any person having an interest in the property, if known, in person or by registered or certified mail at his or her last-known address. If the owner is unknown or there is a reasonable probability that there are unknown persons with interests in the property, the Tribal prosecutor shall provide notice of the seizure and petition for disposition by publication for four weeks in a newspaper of general

circulation in the jurisdiction of the seizure. At least five days shall elapse between each publication of notice. At any time after seizure and prior to Court disposition, the owner of record of such property may petition the Tribal Court in the jurisdiction in which seizure was made to release such property and the Court shall order the release of the property upon a showing by the owner that he or she had no knowledge that such property was being used in violation of this Article. Any person having an interest in the property proceeded against or any person against whom civil or criminal liability would exist if such property is in violation of this Article may, within thirty days after seizure, appear and file an answer or demurrer to the petition. The answer or demurrer shall allege the claimants interest in or liability involving such property. At least thirty but not more than ninety days after seizure, there shall be a hearing before the Court. If the claimant proves by a preponderance of the evidence that he or she:

A. Has not used or intended to use the property to facilitate an offense in violation of this Article;

B. Has an interest in such property as owner or lienor or otherwise acquired by him or her in good faith; and

C. At no time had any knowledge that such property was being or would be used in, or to facilitate, the violation of this Article, the Court shall order that such property or the value of the claimant's interest in such property be returned to the claimant. If there are no claims, if all claims are denied, or if the value of the property exceeds all claims granted and it is shown beyond a reasonable doubt that such property was used in violation of this Article, the Court shall order disposition of such property at such time as the property is no longer required as evidence in any criminal proceeding. The Court may order that property described in subsection (1)(f) of this Section be sold or put to official use by the confiscating agency for a period of not more than one year and that when such property is no longer necessary for official use or at the end of two years, whichever comes first, such property shall be sold. Proceeds from the sale of the property and any money described in subsection (1)(g) of this Section shall be placed into the narcotics revolving fund, pursuant to Section 3-803. Official use shall mean use directly in connection with enforcement of the provisions of this Article.

Any court costs and fees and storage and other proper expenses shall be charged against any person intervening as claimant or owner of the property unless such person shall establish his or her claim. If sale is ordered, the officer holding the sale shall make a return to the Court showing to whom the property was sold and for what price. [TCR 86-79, 14-09]

3-817 School property; distribution, dispensing or possession.

1. It shall be unlawful for any person to knowingly distribute, dispense, or possess with intent to distribute a controlled substance or imitation controlled substance, as defined by Section 3-801 while on any school property used for school purposes which is owned by any private school, public school district, or vocational-technical school district, or within one thousand (1,000) feet of any such school property or while on any school bus owned or operated by any private school, public school district. Any person convicted of violating this Section shall be guilty of a crime.
2. It shall be no defense to a prosecution for a violation of this Section that the violator of this Section was unaware that the prohibited conduct took place while on or within one thousand (1,000) feet of any school property.
3. Any person convicted of an offense under this Section shall be guilty of a Class I offense and subject to a mandatory minimum penalty of ninety (90) days imprisonment. [TCR 86-79, 14-09]

3-818 Prohibited acts; penalties.

1. Except as authorized by the Controlled Substances Act, Sections 3-801, et seq., of this Article, it shall be unlawful for any person to knowingly or intentionally:
   A. Create, distribute, or possess with intent to distribute, a counterfeit controlled substance; or
   B. Distribute any imitation controlled substance as defined by Section 3-801 of this Article, except when authorized by the Food and Drug Administration of the United States Department of Health and Human Services. In the event the appearance of the dosage unit is not reasonably sufficient to establish that the substance is an "imitation controlled substance" the Court or authority concerned should consider in addition to all other factors, the following factors as related to "representation made" in determining whether the substance is an imitation controlled substance:
      i. Statements made by the owner or by any other person in control of the substance concerning the nature of the substance, or its use and effect;
      ii. Statements made to the recipient that the substance may be resold for inordinate profit;
      iii. Whether the substance is packaged in a manner normally used for illicit controlled substances;
      iv. Evasive tactics or actions utilized by the owner or person in control of the substance to avoid detection by law enforcement authorities;
      v. the proximity of the substance to controlled substances.
   C. Except when authorized by the Food and Drug Administration of the United States Department of Health and Human Services, it shall be unlawful for any person to manufacture, distribute, or possess with intent to distribute a synthetic controlled substance.
   D. Erect, keep or maintain any store, shop, warehouse, dwelling house, building, vehicle, aircraft, structure or other place used for the possession, manufacturing, storage, or distribution of a controlled substance.
   E. Omit, remove, alter, or obliterate a symbol required by the Federal Controlled Substances Act, or this Act.
   F. Refuse any entry into any premises or inspection authorized by this Act.
2. Any person who violates the provisions of this Section by using or soliciting the use of services of a person eighteen (18) years of age or under to distribute or dispense a controlled substance or by distributing a controlled substance to a person eighteen (18) years of age to distribute or dispense a controlled substance or by distributing a controlled substance to a person eighteen (18) years of age or under is subject to a mandatory minimum penalty of sixty (60) days.
3. Any person convicted of any offense described in this Section may, in addition to the fine imposed, be assessed an amount not to exceed ten percent (10%) of the fine imposed. Such assessment shall be paid into a revolving fund for enforcement of controlled substances created pursuant to Section 3-803 of this Article.
4. Any person found guilty of larceny, burglary or theft of controlled substances is guilty of a crime.
5. Any person found guilty of robbery or attempted robbery of controlled dangerous substances from a practitioner, manufacturer, distributor or agent thereof as defined in Section 3-801 of this Article is guilty of a crime. [TCR 86-79, 14-09]

3-819 Prohibited acts; fraud, deceit.

1. No person shall obtain or attempt to obtain any preparation excepted from the provisions of the Controlled Substances Act or attempt to procure the administration of the controlled substance:
   A. By fraud, deceit, misrepresentation of a prescription or subterfuge;
   B. By the forgery or alteration of a prescription or of any written order;
   C. By the concealment of a material fact; or
   D. By the use of a false name or the giving of a false address.
2. Information communicated to a physician in an effort to unlawfully procure a dangerous controlled substance, or unlawfully to procure the administration of such drug, shall not be deemed a privileged communication.
3. Any person who violates this Section is guilty of crime. [TCR 86-79]

3-820 Certain substances causing intoxication; exemptions; penalties.

1. For the purpose of inducing intoxication or distortion or disturbance of the auditory, visual, muscular, or mental process, no person shall ingest, use or possess any compound, liquid, or chemical which contains butyl nitrite, isobutyl,nitrate, secondary butyl nitrate, tertiary butyl nitrate, aml nitrate, isopropyl nitrate, isopentyl nitrate, or mixtures containing butyl nitrate, isopropyl nitrate, isopetyl nitrate, or any of their esters, isomers, or analogues, or any other similar compound.
2. No person shall possess, buy, sell, or otherwise transfer any substance specified in this Article's schedules for the purpose of inducing or aiding any other person to inhale or ingest such substance or otherwise violate the provisions of this Section.
3. The provisions of this Section shall not apply to:
   A. The possession and use of a substance specified in Section 3-817 of this Article which is used as part of the treatment by a licensed physician of a disease, condition or injury or pursuant to a prescription of a licensed physician; and
   B. The possession of a substance specified in Section 3-817 of this Article which is used as part of a known manufacturing process or industrial operation when the possessor has obtained a valid permit from the proper authorities.
   C. It shall not be unlawful for any person to possess, use, or transfer peyote in any form if such possession, use, or transfer is in accordance with the practices of the Native American Church, or in such cases where the possession, use or transfer of peyote is strictly in accordance with bona fide medicinal purposes. All sales of peyote permitted under this Section are limited to those sales made by locally recognized members of the Native American Church to locally recognized members of the Native American Church. [TCR 86-79, 89-87, 94-132]
4. Any person convicted of violating any provision of this Section shall be guilty of a crime punishable by imprisonment of not more than one (1) year or by the imposition of a fine not to exceed five thousand dollars ($5,000.00) or by both such imprisonment and fine**.** Each violation shall be considered a separate offense. [TCR 86-79]

3-821 Endeavor and conspiracy. Any person who offers, solicits, attempts, endeavors, or conspires to commit any offense defined in Sections 3-801 et seq., of this Title shall be subject to the penalty prescribed for the offense, the commission of which was the object of the endeavor or conspiracy. [TCR 86-79]

3-822 General penalty clause. Any person who violates any provision of this Act not subject to a specific penalty provision is guilty of a crime punishable by confinement for not more than one (1) year, or by a fine of not more than five thousand dollars ($5,000.00) or both. [TCR 86-79]

3-823 Additional penalties. Any penalty imposed for violation of this Article shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law. [TCR 86-79]

3-824 Severability. If any provision of this Title 3 or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Title 3 which can be given effect without the invalid provisions or applications, and to this end the provisions of this Title 3 are declared to be severable. [TCR 86-79]

3-825 Possession of a dangerous drug; penalty.

1. It shall be unlawful, except as authorized and controlled by federal law, to possess, a controlled substance as defined by Section 3-801(4) unless such substance was obtained directly, or pursuant to a valid prescription or order from a practitioner while acting in the course of his professional practice, or except as otherwise authorized by the Controlled Substances Act, Sections 3-801, et seq. A violation of this Section is the offense of possession of a dangerous drug.
2. Any substance handled in violation of this Section is hereby declared to be contraband.
3. Any personal property used to transport, conceal, manufacture, cultivate, or distribute the controlled substance in violation of this Section shall be subject to forfeiture as contraband as set forth in Section 3-816.
4. Possession of a dangerous drug offense is a Class II offense.
5. Notwithstanding any other provisions of this Section, penalties for violations of this Section pertaining to marijuana in any form or derivative form shall be as follows:
   A. Possession of one ounce or less of marijuana shall be a Class III offense.
   B. Possession of more than one ounce of marijuana shall be a Class II offense.
6. Notwithstanding any other provisions of this Section, it shall not be unlawful for any person to possess, use, or transfer peyote in any form if such possession, use, or transfer is in accordance with the practices of the Native American Church, or in such cases where the possession, use, or transfer of peyote is strictly in accordance with bona fide medicinal purposes. All sales of peyote permitted under this Section are limited to those sales made by locally recognized members of the Native American Church to locally recognized members of the Native American Church.
7. Any person convicted of a Class II offense under this Section shall be subject to a mandatory minimum penalty of ten (10) days imprisonment. [TCR 86-79, 89-87, 14-09]

3-826 Dangerous drug offense; penalty.

1. It shall be unlawful, except as authorized and controlled by federal law, to manufacture, deliver, distribute, possess with intent to distribute, dispense, create, or cultivate a controlled substance as defined by Section 3-801(4) unless such substance was obtained directly, or pursuant to a valid prescription or order from a practitioner while acting in the course of his professional practice, or except as otherwise authorized by the Controlled Substances Act, Sections 3-801, et seq. A violation of this Section is a dangerous drug offense.
2. Any substance handled in violation of this Section is hereby declared to be contraband.
3. Any personal property used to transport, conceal, manufacture, cultivate, or distribute the controlled substance in violation of this Section shall be subject to forfeiture as contraband as set forth in Section 3-816.

4. Dangerous drug offense is a Class I offense.
5. Notwithstanding any other provisions of this Section, it shall not be unlawful for any person to possess, use, or transfer peyote in any form if such possession, use, or transfer is in accordance with the practices of the Native American Church, or in such cases where the possession, use, or transfer of peyote is strictly in accordance with bona fide medicinal purposes. All sales of peyote permitted under this Section are limited to those sales made by locally recognized members of the Native American Church to locally recognized members of the Native American Church.
6. Any person convicted of an offense under this Section shall be subject to a mandatory minimum penalty of thirty (30) days imprisonment. [TCR 86-79, 89-87, 14-09]

TITLE 3
ARTICLE 9

[Reserved]

TITLE 3
ARTICLE 10

[Reserved]

TITLE 3
ARTICLE 11

[Reserved]

TITLE 3
ARTICLE 12
ADULT AND ELDERLY PROTECTIVE SERVICES ACT

3-1200 Citation.
3-1201 Legislative intent.
3-1202 Definitions.
3-1203 Duty of healthcare providers to report abuse.
3-1204 Duty of law enforcement to investigate.
3-1205 Immunity from liability.
3-1206 No access to records.
3-1207 Evidence exclusions void.
3-1208 No abuse solely for reliance upon spiritual healing.
3-1209 Willful failure to report.
3-1210 Willful release of confidential information.
3-1211 Abuse of a vulnerable or elderly adult.
3-1212 Ex parte order authorized.
3-1213 Subpoena of Medical and Financial Records.
3-1214 Procedures for prosecution.
3-1215 Conditions of Release.
3-1216 Elder Protection Order and Time Limits.
3-1217 Violation of Protection Orders.
3-1218 Severability.

3-1200 Citation. This Article shall be known and may be cited as the Adult and Elderly Protective Services Act. [TCR 86-79, 15-133]

3-1201 Legislative Intent. The Tribal Council recognizes the need for the investigation and provision of services to certain persons who are substantially impaired or are unable to protect themselves from abuse, neglect, or exploitation. Often such persons cannot find others able or willing to render assistance. The Tribal Council intends through the Adult and Elderly Protective Services Act to establish a program designed to fill its need and to assure the availability of the program to all eligible persons. It is also the intent of the Tribal Council to authorize the least restriction possible on the exercise of personal and civil rights consistent with the person's need for services. [TCR 86-79, 15-133]

3-1202 Definitions. For the purposes of the Adult and Elderly Protective Services Act, the definitions found below shall be used.

1. "Abuse" shall mean any knowing, intentional, or negligent act or omission on the part of a caregiver or any person which results in physical injury, unreasonable confinement, false imprisonment, cruel punishment, sexual abuse, exploitation, or neglect of essential services to a vulnerable or elderly adult.
2. "Adult protective services" shall mean those services provided by the Department for the prevention, correction, or discontinuance of abuse, neglect or exploitation. Such services shall be those necessary and appropriate under the circumstances to protect an abused, neglected, or exploited vulnerable or elderly adult, ensure that the least restrictive alternative is provided, prevent further abuse, neglect, or exploitation, and promote self-care and independent living. Such services shall include, but not be limited to: (1) Receiving and investigating reports of alleged abuse, neglect or exploitation; (2) developing social service plans; (3) arranging for the provision of services such as medical care, mental health care, legal services, fiscal management housing, or home health care; (4) arranging for the provision of items such as food, clothing, or shelter; and (5) arranging or coordinating services for caregivers.
3. "Caregiver" shall mean any person or entity which has assumed the responsibility for the care of a vulnerable or elderly adult voluntarily, by express or implied contract, or by order of a court of competent jurisdiction.

4. "Cruel punishment" shall mean punishment which intentionally causes physical injury to a vulnerable or elderly adult.
5. "Department" shall mean the tribal child and family services program, or such other program, department or agency designated by the Tribe to carry out adult protective services on behalf of the Tribe.
6. "Elderly adult" shall mean any person fifty-five (55) years of age or older.
7. "Essential services" shall mean those services necessary to safeguard the person or property of a vulnerable or elderly adult. Such services shall include, but not be limited to, sufficient and appropriate food and clothing, temperate and sanitary shelter, treatment for physical needs, and proper supervision.
8. "Exploitation" shall mean the taking of property of a vulnerable or elderly adult, including but not limited to the theft of medications, by any person by means of undue influence, breach of a fiduciary relationship, deception, extortion, or any unlawful means.
9. "Law enforcement agency" shall mean any police officer of the Winnebago Tribe of Nebraska, the United States, or the state, authorized to enforce laws within the boundaries of the Winnebago Indian Reservation.
10. "Least restrictive alternative" shall mean adult protective services provided in a manner no more restrictive of a vulnerable or elderly adult's liberty and no more intrusive than necessary to achieve and ensure essential services.
11. "Living independently" shall include, but not be limited to, using the telephone, shopping, preparing food, housekeeping, and administering medications.
12. "Neglect" shall mean any knowing or intentional act or omission on the part of a caregiver to provide essential services or the failure of a vulnerable or elderly adult, due to physical or mental impairments, to perform self-care of obtain essential services to such an extent that there is actual physical injury to a vulnerable or elderly adult or imminent danger of the vulnerable or elderly adult suffering physical injury or death.
13. "Permit" shall mean to allow a vulnerable or elderly adult over whom one has a proximate or direct degree of control to perform an act or acts or be in a situation which the controlling person could have prevented by the reasonable exercise of such control.
14. "Physical injury" shall mean damage to bodily tissue caused by non-therapeutic conduct including, but not limited to, fractures, bruises, lacerations, internal injuries, or dislocations, and shall include, but not be limited to, physical pain, illness, or impairment of physical function.
15. "Proper supervision" shall mean care and control of a vulnerable or elderly adult which a reasonable and prudent person would exercise under similar facts and circumstances.
16. "Self-care" shall include, but not be limited to, personal hygiene, eating, dressing, and obtaining adequate medical and dental care.
17. "Sexual Abuse" shall mean sexual contact and sexual penetration as described in Section 3-417 of the Winnebago Tribal Code.
18. "Substantial functional impairment" shall mean a substantial incapability, because of physical limitations, of living independently or providing self-care as determined through observation, diagnosis, investigation, or evaluation.
19. "Substantial mental impairment" shall mean a substantial disorder of thought, mood, perception, orientation, or memory that grossly impairs judgment, behavior, or ability to live independently or provide self-care as revealed by observation, diagnosis, investigation, or evaluation.
20. "Unreasonable confinement" shall mean confinement that intentionally causes physical injury to a vulnerable or elderly adult.
21. "Vulnerable adult" shall mean any person eighteen years of age or older who, due to advanced age or otherwise, has a substantial mental or functional impairment or for whom a guardian has been appointed by a court of competent jurisdiction. [TCR 86-79, 15-133]

3-1203 Duty to report abuse, neglect or exploitation.

1. When any caregiver or employee of a caregiver, physician, psychologist, physician assistant, nurse, nursing assistant, other medical, developmental disability, or mental health professional, law enforcement personnel, operator or employee of a sheltered workshop, operator or employee of a senior center, adult protective services professional or paraprofessional, employee or elected official of the Tribe, or any human services professional or paraprofessional, not including a member of the clergy, or any other person has reasonable cause to believe that a vulnerable or elderly adult has been subjected to abuse, neglect or exploitation or observes such adult being subjected to conditions or circumstances which reasonably would result in abuse, neglect or exploitation, he or she shall report the incident or cause a report to be made to the appropriate law enforcement agency, or the Department, in the manner designated under subsection 3-1203(5).
2. Such report may be made by telephone, anonymously or with the caller giving his or her name and address, and, if requested by the Department, shall be followed by a written report within forty-eight (48) hours. To the extent available, the report shall contain: (a) The name, address, and age of the vulnerable or elderly adult; (b) the address of the caregiver or caregivers of the elderly or vulnerable adult; (c) the nature and extent of the alleged abuse or the conditions and circumstances which would reasonably be expected to result in such abuse; (d) any evidence of previous abuse including the nature and extent of the abuse; and (e) any other information which in the opinion of the person making the report may be helpful in establishing the cause of the alleged abuse and the identity of the perpetrator or perpetrators.
3. Any law enforcement agency receiving a report of abuse shall notify the Department no later than the next working day by telephone or mail.
4. A report of abuse, neglect, or exploitation made to the Department which was not previously made to or by a law enforcement agency shall be communicated to the appropriate law enforcement agency by the Department no later than the next working day by telephone or mail.
5. The Department shall designate and publish a telephone number to be used by any person any hour of the day or night and any day of the week to make reports of abuse, neglect, or exploitation. [TCR 86-79, 15-133]

3-1204 Duty of law enforcement to investigate; Role of the Department; Interference with investigation and retaliation; Penalty.

1. The duty to investigate shall be held jointly between law enforcement and the Department.
2. Upon the receipt of a report concerning abuse, neglect or exploitation pursuant to Section 3-1203, it shall be the duty of the law enforcement agency (a) to make an investigation if deemed warranted because of alleged violations of Section 3-1211; (b) to take immediate steps, if necessary, to protect the elderly or vulnerable adult; and (c) to institute legal proceedings if appropriate. The law enforcement agency shall notify the Department if an investigation is undertaken. Such notification shall be made no later than the next working day following receipt of the report.
3. The law enforcement agency shall make written reports or a case summary to the Department and the Tribal prosecutor of investigated cases of abuse and action taken with respect to all such cases.
4. Upon the receipt of a report concerning abuse, neglect or exploitation pursuant to Section 3-1203, it shall be the duty of the Department to: (a) initiate an investigation within one (1) business day of receipt of a report; (b) conduct a needs assessment and offer services to the elderly or vulnerable adult; (c) prepare a written plan for the delivery of services which provide the least restrictive alternatives consistent with the elderly or vulnerable adult's needs; and (d) work in conjunction with law enforcement and the Prosecutors office in legal proceedings, including emergency intervention, as necessary.

5. The Department will inform the elderly or vulnerable adult the following:
   a. About the investigation;
   b. That before seeking entry into their home, the elderly or vulnerable adult has the right to refuse to allow an Department worker into their home; the Department shall also inform the elderly or vulnerable adult of the right of the Department worker to seek a warrant to gain access; and
   c. That the elderly or vulnerable adult has the right to refuse services.
6. Any person who knowing and intentionally interferes with a lawful investigation of suspected elder or vulnerable adult abuse, neglect or exploitation shall be guilty of a Class III offense
7. Any person who retaliates by any means against any person who has made a good faith report of suspected elder or vulnerable adult abuse, neglect or exploitation or who cooperates with any investigation of suspected elder or vulnerable adult abuse, neglect or exploitation shall be guilty of a Class III offense. [TCR 86-79, 15-133]

3-1205 Immunity from liability. Any person participating in an investigation or the making of a report pursuant to the Adult and Elderly Protective Services Act or participating in a judicial proceeding resulting therefrom shall be immune from any liability except (1) as otherwise provided in the Adult and Elderly Protective Services Act; or (2) for malfeasance in office or willful or wanton neglect of duty; or (3) for false statements of fact made with malicious intent. [TCR 86-79, 15-133]

3-1206 Access to Reports; Release of Information; When; Exceptions.

1. No person, official, or agency shall have access to the records relating to abuse except as follows:
   a. A law enforcement agency investigating a report of known or suspected abuse;
   b. A Tribal prosecutor;
   c. A physician who has before him or her a person whom he or she reasonably suspects may be abused;
   d. An agency having the legal responsibility or authorization to care for, treat or supervise an abused vulnerable or elderly adult;
   e. Defense counsel in preparation of the defense of a person charged with abuse;
   f. The General Counsel for the Winnebago Tribe of Nebraska; and
   g. The designated protection and advocacy system authorized pursuant to the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. 6000, as amended, and the Protection and Advocacy for Mentally Ill Individuals Act, 42 U.S C. 10801, as amended, acting upon a complaint received from or on behalf of a person with developmental disabilities or mental illness.
2. The Department or appropriate law enforcement agency shall provide requested information to any person legally authorized by this subjection to have access to records relating to abuse, neglect or exploitation, when ordered by the Tribal Court, or upon compliance by such person with identification requirements established by the rules and regulations of such law enforcement agency. Such information shall not include the name and address of the person making the report. The name and other identifying data of any person requesting or receiving information from the law enforcement agency and dates and circumstances under which requests are made or information is released shall be entered into the records of the Department or law enforcement agency.
3. The name of the person who reports abuse, neglect or exploitation of an elderly or vulnerable adult as required by this Act is confidential and shall not be released to any person unless the reporter consents to the release or unless the release is ordered by the Court. The Court may release the reporter's name only after notice to the reporter is given, a closed evidentiary hearing is held, and the need to protect the vulnerable or elderly adult is found to be greater than the reporter's right to

confidentiality. The reporter's name shall be released only to the extent necessary to protect the vulnerable or elderly adult. [TCR 86-79, 15-133]

3-1207 Evidence exclusions void.

1. No rule of evidence or other provision of law concerning confidential communications shall apply to prevent reports made pursuant to the Adult and Elderly Protective Services Act unless otherwise specifically mentioned in the Act.
2. Evidence shall not be excluded from any judicial proceeding resulting from a report made pursuant to the Adult and Elderly Protective Services Act on the ground that it is a confidential communication protected by the privilege granted to husband and wife, patient and physician, or client and professional counselor. [TCR 86-79]

3-1208 No abuse, neglect or exploitation solely for reliance upon spiritual healing. No person shall be considered to be abused, neglected or exploited for the sole reason that such person relies upon spiritual means alone for treatment in accordance with the tenets and practices of a recognized church, religious denomination, or traditional Native American spiritual practices in lieu of medical treatment. [TCR 86-79, 15-133]

3-1209 Willful failure to report. Penalty. Any person who willfully fails to make any report required by the Adult and Elderly Protective Services Act shall be guilty of a Class III offense. [TCR 86-79]

3-1210 Willful release of confidential information. Penalty. Any person who knowingly releases information required to be kept confidential by the Adult and Elderly Protective Services, except as provided in the Act, shall be guilty of a Class III offense. [TCR 86-79]

3-1211 Abuse, neglect or exploitation of a vulnerable or elderly adult; Penalty.

1. A person commits abuse, neglect or exploitation of a vulnerable or elderly adult if he or she through a knowing and intentional act causes or permits a vulnerable or elderly adult to be:
   a. Physically injured;
   b. Unreasonably confined;
   c. Falsely imprisoned as defined in Sections 3-414 and 3-415 of the Winnebago Tribal Code;
   d. Sexually abused;
   e. Exploited;
   f. Cruelly punished; or
   g. Subject to neglect of essential services.
2. Abuse, neglect or exploitation of a vulnerable or elderly adult is a Class I offense. [TCR 86-79, 15-133]

3-1212 Short-term protective services, temporary placement; Ex parte order authorized.

1. The Tribal Court may issue an ex parte order authorizing the provision of short-term involuntary adult protective services or temporary placement for a vulnerable or elderly adult for up to seventy-two hours, excluding non-judicial days, pending the hearing for a need for continuing services, after finding on the record that:
   a. The person is a vulnerable or elderly adult;
   b. An emergency exists; and
   c. There are compelling reasons for ordering protective services or temporary placement.

2. An ex parte order shall be issued only if other protective custody services are unavailable or other services provide insufficient protection.
3. The Department shall contact the Tribal prosecutor to file an application for short-term involuntary adult protective services or temporary placement if an investigation indicates probable cause to believe that an emergency exists for a vulnerable adult. The Department shall not be given legal custody nor be made guardian of such vulnerable or elderly adult. A vulnerable or elderly adult shall be responsible for the costs of services provided either through his or her own income or other programs for which he or she may be eligible.
3. A law enforcement officer may enter the premises where the vulnerable or elderly adult is located after obtaining the court order and announcing his or her authority and purpose. Forcible entry may be made only after the Court order has been obtained unless there is probable cause to believe that the delay of such entry would cause the vulnerable or elderly adult to be in imminent danger of life-threatening physical injury or the neglect of essential services.
4. When, from the personal observations of a representative a law enforcement officer, it appears probable that the vulnerable or elderly adult is likely to be in imminent danger of life-threatening physical injury or the neglect of essential services if he or she is not immediately removed from the premises, the law enforcement agency shall, when authorized by the Court order, take into custody and transport the vulnerable or elderly adult to an appropriate medical or protective placement facility.
5. When action is taken under this Section, a hearing shall be held within seventy-two hours of the signing of the Court order, excluding non-judicial days, to establish probable cause for short term involuntary adult protective services or for protective placement. Unless the vulnerable or elderly adult has counsel of his or her own choice or has indicated a desire for an attorney of his or her own choice, the Court shall appoint an attorney to represent him or her in the proceeding, who shall have the powers and duties of a guardian ad litem.
6. Notice of the hearing shall be served personally on the vulnerable or elderly adult. Waiver of notice by the vulnerable or elderly adult shall not be effective unless he or she attends the hearing or such notice is waived by the guardian ad litem. Notice of the hearing shall be given to the following parties whose whereabouts can be readily ascertained: (a) The spouse of the vulnerable or elderly adult; (b) children of the vulnerable or elderly adult; and (c) any other party specified by the Court.
7. A judgment authorizing continuance of short term involuntary adult protective services shall prescribe those specific adult protective services which are to be provided, the duration of the services which shall not exceed sixty days, and the person or persons who are authorized or ordered to provide them. [TCR 86-79, 15-133]

3-1213 Subpoena of Medical and Financial Records. The Tribal Court may issue subpoenas for the release of medical records and financial records upon motion by the Tribal Prosecutor in order to facilitate investigations of reported elder or vulnerable adult abuse, neglect or exploitation. Upon hearing evidence, the Court must find reasonable grounds to believe that elder or vulnerable adult abuse, neglect or exploitation is occurring or has occurred in order to issue a subpoena. [TCR 15-133]

3-1214 Procedures for prosecution. The Tribal prosecutor shall follow the following procedures for the prosecution of elder or vulnerable adult abuse, neglect or exploitation to ensure the effective prosecution of such crimes and the protection and safety of victims.

1. The Tribal prosecutor will implement a “no drop” policy which prohibits victims from withdrawing charges.

2. The Tribal prosecutor will not offer diversion, deferred sentencing, or any other agreements not to prosecute to alleged perpetrators charged with crimes of elder or vulnerable adult abuse, neglect or exploitation.
3. No member of the prosecution office has the authority to order the release of an alleged perpetrator prior to the procedures described in Section 3-1215.
4. The Tribal prosecutor will not dismiss or reduce the charge in an elder or vulnerable abuse, neglect or exploitation case without prior consultation and review with the arresting officer and any case worker involved in the investigation despite a victim's desire to withdraw charges.
5. The Tribal prosecutor shall attempt to prepare the case so the victim is not required to act as the primary witness, except as a last resort. The Tribal prosecutor shall enlist any and all evidentiary avenues, including but not limited to photographs, other witnesses, excited utterances and other law enforcement testimony, medical records, and history of past abuse, in order to effectively prosecute the case. [TCR 15-133]

3-1215 Conditions of Release.

1. In making a decision concerning pretrial release of a person who is arrested for or charged with elder or vulnerable adult abuse, neglect or exploitation, or a crime involving elder abuse, neglect or exploitation, the Tribal Court shall review the defendant's previous records of convictions for elder abuse, neglect or exploitation and the facts of the arrest and detention of the person, in order to determine whether the person:
   a. Is a threat to the alleged victim;
   b. Is a threat to public safety; and
   c. Is reasonably likely to appear in court.
2. Before releasing a person arrested for or charged, the Tribal Court shall make findings on the record if possible concerning the determination made in accordance with subsection (1) and may impose conditions of release or bail on the person to protect the alleged victim and to ensure the appearance of the person at a subsequent court proceeding.
3. Notwithstanding any other provisions in this Code, all persons arrested for elder or vulnerable adult abuse, neglect or exploitation shall not be held for more than 120 hours, including weekends and holidays, without a hearing. [TCR 15-133]

3-1216 Elder Protection Order and Time Limits.

1. If the Court determines that there is reasonable cause to believe that a vulnerable or elderly adult is abused, neglected, or exploited, the Court shall issue an elder protection order which provides appropriate protection for the vulnerable or elderly adult. Such protection may include, but is not limited to the following.
   a. Removing the vulnerable or elderly adult from the place where the abuse, neglect, or exploitation has taken or is taking place.
   b. Removing the person who abused, neglected, or exploited the vulnerable or elderly adult from the victim's home immediately.
   c. Restraining the person who has abused, neglected, or exploited the vulnerable or elderly adult from continuing such acts.
   d. Placing the vulnerable or elderly adult under protective supervision, wherein the vulnerable or elderly adult is permitted to remain in the home, providing the Department or a designated agent provides supervision and assistance to correct the abuse, neglect or exploitation of the vulnerable or elderly adult.

e. Requiring the vulnerable or elderly adult's family or caretaker or any other person with a fiduciary duty to the vulnerable or elderly adult to account for the vulnerable or elderly adult's funds and property.

f. Requiring any person who has abused, neglected, or exploited a vulnerable or elderly adult to pay restitution to the vulnerable or elderly adult for damages resulting from that person's wrongdoing.

g. Appointing a representative or a guardian ad litem for the vulnerable or elderly adult.

h. Recommending that a representative payee be named.

i. Ordering the Department to prepare a plan for and deliver protective services which provide the least restrictive alternatives for services, treatment, or placement consistent with the vulnerable or elderly adult's needs.

2. No protection order shall be issued until three (3) days after the petition has been served on all parties, except for an emergency protection order.

3. An initial non-emergency vulnerable or elderly adult protection order shall be issued for a period not to exceed sixty (60 days).

4. The non-emergency protection order may be extended as many times as necessary to protect the vulnerable or elderly adult. An extension of a protection order can only be issued after a petition is filed by a party seeking an extension, notice, opportunity for hearing, and a determination based upon proof beyond a reasonable doubt that such an extension is necessary for the protection of the vulnerable or elderly adult. Each extension order shall be for a period not to exceed thirty (30) days. If modification or termination of a protection order is needed, a motion shall be filed by the party seeking the modification or termination.

5. Notice shall be provided for a modification or termination hearing. At the hearing the burden of proof will be on the motioning party to prove by clear and convincing evidence that such a modification or termination is in the best interests of the vulnerable or elderly adult, or that such modification is necessary for the protection of the vulnerable or elderly adult. [TCR 15-133]

3-1217 Violation of Protection Orders. Violation of Court ordered protection orders by a respondent may be punished by confinement in jail for as long as ninety (90) days or up to a $1,000 fine. [TCR 15-133]

3-1218 Severability. If any party or parts, or application of any part of this Act is held invalid, such holding shall not affect the validity of the remaining parts of this Act. [TCR 15-133]

TITLE 3
ARTICLE 13
[Repealed August 28, 2015]
[TCR 15-133]

TITLE 3
ARTICLE 14
WINNEBAGO TRIBAL POLICE FORCE

3-1400 Establishment of a force of police officers.
3-1401 Definitions.
3-1402 Standards.
3-1403 Training standards.
3-1404 Training.
3-1405 No exemptions.
3-1406 Status of Tribal peace officers.
3-1407 Weapons.
3-1408 Supplementary capacity.
3-1409 Supervision of Tribal peace officers.

3-1400 Establishment of a force of police officers. There is hereby ordained and established a force of reserve peace officers to be known as the Winnebago Tribal Reserve Police Force. The Winnebago Tribal Council shall serve as the governing body. The Winnebago Chief of Police shall serve as the supervisor of said force. [TCR 86-79]

3-1401 Definitions.

1. "Minimum training course" shall mean a curriculum designed to ensure that a reserve peace officer possesses sufficient knowledge and training so as to be an effective peace officer. Said course shall be determined by the Chief of Police provided that no such curriculum shall include less training than would be required for the Tribal officer to become cross-deputized as either a federal law enforcement officer or an officer of any one of the fifty states of the United States. The Winnebago Chief of Police shall be responsible for determining the actual length of training required under this provision.
2. "Tribal force" means the organization of Tribal peace officers established as provided by this Act.
3. "Tribal peace officer" shall mean a volunteer, non-regular sworn member of a law enforcement agency who serves with or without compensation, has regular police powers while functioning as a law enforcement officer, and participates in the Winnebago Tribal Police's activities, including crime prevention and control, preservation of the peace, and enforcement of law. [TCR 86-79]

3-1402 Standards. The Chief of Police may establish minimum standards of physical, educational, mental, and moral fitness for members of the reserve force. The Chief of Police shall appoint all Tribal peace officers, and no person may act as a reserve peace officer without having been so appointed. [TCR 86-79]

3-1403 Training Standards. Each person appointed to serve, as a reserve peace officer shall satisfactorily complete a minimum training course. In addition, if a Tribal peace officer is authorized by the Chief of Police to carry weapons, such reserve peace officer shall satisfactorily complete the same training course in the use of weapons as would be required for a regular peace officer. [TCR 86-79]

3-1404 Training. Training for individuals appointed as Tribal peace officers shall be chosen by the Chief of Police, but may be obtained in a community college or such other facility as the Chief of Police so directs. [TCR 86-79]

3-1405 No exemptions. There shall be no exemptions from the personal and training standards set forth herein. [TCR 86-79]

3-1406 Status of Tribal peace officers. Tribal peace officers shall serve as peace officers on the orders and at the discretion of the Chief of Police or his designee as the case may be. While in the actual performance of his duties, reserve peace officers shall be vested with the same rights, privileges, obligations, and duties as any other peace officer. [TCR 86-79]

3-1407 Weapons. A member of a Tribal force shall not carry weapons until certified by the Chief of Police as having completed the training course in the use of weapons as required in Section 3-1403. [TCR 86-79]

3-1408 Supplementary capacity. Tribal peace officers shall serve and act only in a supplementary capacity to the regular force, but may assume full-time duties of regular peace officers upon compliance by the Chief of Police. [TCR 86-79]

3-1409 Supervision of Tribal peace officers. Tribal peace officers shall be subordinate to regular peace officers, shall not serve as peace officers unless on orders of the Chief of Police or his designee, shall wear a uniform prescribed by the Chief of Police unless the Chief of Police designates alternate apparel. Tribal peace officers shall report directly to the Chief of Police or next highest supervisor when acting as a law enforcement officer. [TCR 86-79]

TITLE 3
ARTICLE 15
CRIMINAL TRAFFIC OFFENSES

(As adopted September 24, 2003)

3-1500 Driving under influence of alcoholic liquor or drug; penalties; revocation of operator's license; applicable to violation of statutes or ordinances; probation; alcohol assessment; court; powers.
3-1501 Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; when test administered; refusal; penalty.
3-1502 Driving under influence of alcoholic liquor or drugs; test; additional test; refusal to permit; effect; results of test; available upon request.
3-1503 Driving under influence of alcoholic liquor or drugs; chemical test; consent of person incapable of refusal not withdrawn.
3-1504 Driving under influence of alcoholic liquor or drugs; chemical test; violation of statute or ordinance; results; competent evidence; permit; fee.
3-1505 Driving under influence of alcohol; operator's license; confiscation and revocation; procedures; appeal.
3-1506 Driving under influence of alcohol; revocation of impounded operator's license; procedure; reinstatement; fee; eligibility for employment driving permit and ignition interlock device.
3-1507 Operator's license revocation decision; notice; contents.
3-1508 License revocation; appeal.
3-1509 Blood sample; results of chemical test; admissible in criminal prosecution; disclosure required.
3-1510 Person under twenty-one years of age; prohibited acts; enforcement.
3-1511 Implied consent to submit to chemical test; when test administered; refusal; penalty.
3-1512 Impounded operator's license; sealing of record; when; operation of motor vehicle authorized.
3-1513 Ignition interlock device; court order authorized; issuance of restricted Class O license; prohibited act; violation; penalty.
3-1514 Careless driving, defined; penalty.
3-1515 Reckless driving, defined; penalty.
3-1516 Willful reckless driving, defined.
3-1517 Willful reckless driving; first offense; penalty.
3-1518 Reckless driving or willful reckless driving; second offense; penalty.
3-1519 Reckless driving or willful reckless driving; third and subsequent offenses; penalty.

3-1500 Driving under influence of alcoholic liquor or drug; penalties; revocation of operator's license; applicable to violation of statutes or ordinances; probation; alcohol assessment; court; powers.

1. It shall be unlawful for any person to operate or be in the actual physical control of any motor vehicle:
   A. While under the influence of alcoholic liquor or of any drug;
   B. When such person has a concentration of eight-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood;

C. When such person has a concentration of eight-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath.

2. Any person who operates or is in the actual physical control of any motor vehicle while in a condition described in subdivision (1) of this Section shall be guilty of a crime and upon conviction punished as follows:

A. If such person (i) has not had a conviction under this Section in the eight years prior to the date of the current conviction or (ii) has not been convicted under a city or village ordinance enacted pursuant to this Section in the eight years prior to the date of the current conviction, such person shall be guilty of a Class W offense, and the Court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle for any purpose for a period of six months from the date ordered by the Court and shall order that the operator's license of such person be revoked for a like period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. Such revocation shall not run concurrently with any jail term imposed. If the Court places such person on probation or suspends the sentence for any reason, the Court shall, as one of the conditions of probation or sentence suspension, order such person not to drive any motor vehicle for any purpose for a period of sixty days from the date of the order unless otherwise authorized by an order issued pursuant to Section 3-1513. [TCR 04-09]

B. If such person (i) has had one conviction under this Section in the eight years prior to the date of the current conviction or (ii) has been convicted once under a city or village ordinance enacted pursuant to this Section in the eight years prior to the date of the current conviction, such person shall be guilty of a Class W offense, and the Court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle for any purpose for a period of one year from the date ordered by the Court and shall order that the operator's license of such person be revoked for a like period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. Such revocation shall not run concurrently with any jail term imposed. [TCR 04-09]

C. If such person (i) has had two or more convictions under this Section in the eight years prior to the date of the current conviction, (ii) has been convicted two or more times under a city or village ordinance enacted pursuant to this Section in the eight years prior to the date of the current conviction, or (iii) has been convicted as described in subdivisions (i) and (ii) of this subdivision a total of two or more times in the eight years prior to the date of the current conviction, such person shall be guilty of a Class W offense, and the Court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle in this jurisdiction for any purpose for a period of fifteen years from the date ordered by the Court and shall order that the operator's license of such person be revoked for a like period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. Such revocation shall not run concurrently with any jail term imposed. If the Court places such person on probation or suspends the sentence for any reason, the Court shall, as one of the conditions of probation or sentence suspension, order such person not to drive any motor vehicle in this jurisdiction for any purpose for a period of one year unless otherwise authorized by an order issued pursuant to Section 3-1513, and such order of probation shall include as one of its conditions confinement in jail for seven days.

3. For each conviction under this Section, the Court shall as part of the judgment of conviction make a finding on the record as to the number of the defendant's prior convictions under this Section and under a city or village ordinance enacted pursuant to this Section in the eight years prior to the date

of the current conviction. The defendant shall be given the opportunity to review the record of his or her prior convictions, bring mitigating facts to the attention of the Court prior to sentencing, and make objections on the record regarding the validity of such prior convictions.

4. For purposes of this Section, the eight-year period shall be computed from the date of the prior offense to the date of the offense which resulted in the current conviction and the terms conviction under this Section and prior conviction shall include any conviction under this Section as it existed at the time of such conviction regardless of subsequent amendments to such Section.
5. Any period of revocation or order not to drive imposed under this Section shall be reduced by any period imposed under Section 3-1506. Any period of revocation or order not to drive imposed under this Section shall not prohibit the operation of a motor vehicle under the terms and conditions of an employment driving permit issued pursuant to subsection (2) of Section 3-1506.
6. Any person operating a motor vehicle on the highways or streets of this jurisdiction while his or her operator's license has been revoked pursuant to subdivision (2)(c) of this Section shall be guilty of a Class I offense.
7. Any city or village may enact ordinances in conformance with this Section and Section 3-1501. Upon conviction of any person of a violation of such a city or village ordinance, the provisions of this Section with respect to the operator's license of such person shall be applicable the same as though it were a violation of this Section.
8. Any person who has been convicted of driving while intoxicated for the first time or any person convicted of driving while intoxicated who has never been assessed for alcohol abuse shall, during a presentence evaluation, submit to and participate in an alcohol assessment. The alcohol assessment shall be paid for by the person convicted of driving while intoxicated. At the time of sentencing, the judge, having reviewed the assessment results, may then order the convicted person to follow through on the alcohol assessment results at the convicted person's expense in lieu of or in addition to any penalties deemed necessary. [TCR 86-31, 86-79, 95-06, 03-194, Same as Neb. Rev. Stat. 60-6196]

3-1501 Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; when test administered; refusal; penalty.

1. Any person who operates or has in his/her actual physical control a motor vehicle within the Winnebago Reservation shall be deemed to have given his or her consent to submit to a chemical test or tests of his/her blood, breath, or urine, for the purpose of determining the concentration of alcohol or the presence of drugs in such blood, breath, or urine.
2. Any peace officer who has been duly authorized to make arrests for violations of traffic laws of this Tribe or of ordinances of any city or village may require any person arrested for any offense arising out of acts alleged to have been committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of alcoholic liquor or drugs to submit to a chemical test or tests of his or her blood, breath, or urine for the purpose of determining the concentration of alcohol or the presence of drugs in such blood, breath, or urine when the officer has reasonable grounds to believe that such person was driving or was in the actual physical control of a motor vehicle upon a public highway in this jurisdiction while under the influence of alcoholic liquor or drugs in violation of Section 3-1500.
3. Any peace officer who has been duly authorized to make arrests for violation of traffic laws of this Tribe may require any person who operates or has in his/her actual physical control a motor vehicle within this Reservation to submit to a preliminary test of his/her breath for alcohol concentration if the officer has reasonable grounds to believe that such person has alcohol in his or her body, has committed a moving traffic violation, or has been involved in a traffic accident. Any person who refuses to submit to such preliminary breath test or whose preliminary breath test

results indicate an alcohol concentration in violation of Section 3-1500 shall be placed under arrest. Any person who refuses to submit to such preliminary breath test shall be guilty of an infraction.

4. Any person arrested as provided in this Section may, upon the direction of a peace officer, be required to submit to a chemical test or tests of his/her blood, breath, or urine for a determination of the concentration of alcohol or the presence of drugs. If the chemical test discloses the presence of a concentration of alcohol in violation of subsection (1) of Section 3-1500, the person shall be subject to the administrative revocation procedures provided in Sections 3-1506 to 3-1507 and upon conviction shall be punished as provided in Section 3-1500. Any person who refuses to submit to such test or tests required pursuant to this Section shall be subject to the administrative revocation procedures provided in Sections 3-1506 to 3-1507 and shall guilty of a crime and upon conviction punished as follows:

A. If such person (i) has not had a conviction under this Section for refusal to submit to a chemical blood, breath, or urine test in the eight years prior to the date of the current conviction or (ii) has not been convicted under a city or village ordinance enacted pursuant to this Section as authorized by Section 3-1500 in the eight years prior to the date of the current conviction, such person shall be guilty of a Class W offense, and the Court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle in this jurisdiction for any purpose for a period of six months from the date ordered by the Court and shall order that the operator's license of such person be revoked for a like period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. Such revocation shall not run concurrently with any jail term imposed. If the Court places such person on probation or suspends the sentence for any reason, the Court shall, as one of the conditions of probation or sentence suspension, order such person not to drive any motor vehicle in this jurisdiction for any purpose for a period of sixty days unless otherwise authorized by an order issued pursuant to Section 3-1513. [TCR 04-09]

B. If such person (i) has had one conviction under this Section for refusal to submit to a chemical blood, breath, or urine test in the eight years prior to the date of the current conviction or (ii) has been convicted once under a city or village ordinance enacted pursuant to this Section as authorized by Section 3-1500 in the eight years prior to the date of the current conviction, such person shall be guilty of a Class W offense, and the Court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle in this jurisdiction for any purpose for a period of one year from the date ordered by the Court and shall order that the operator's license of such person be revoked for a like period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. Such revocation shall not run concurrently with any jail term imposed. If the Court places such person on probation or suspends the sentence for any reason, the Court shall, as one of the conditions of probation or sentence suspension, order such person not to drive any motor vehicle in this jurisdiction for any purpose for a period of six months from the date of the order unless otherwise authorized by an order issued pursuant to Section 3-1513, and such order of probation shall include as one of its conditions confinement in jail for forty-eight hours. [TCR 04-09]

C. If such person (i) has had two or more convictions under this Section for refusal to submit to a chemical blood, breath, or urine test in the eight years prior to the date of the current conviction; (ii) has been convicted two or more times under a city or village ordinance enacted pursuant to this Section as authorized by Section 3-1500 in the eight years prior to the date of the current conviction; or (iii) has been convicted as described in subdivisions (i) and (ii) of this subdivision a total of two or more times in the eight years prior to the

date of the current conviction, such person shall be guilty of a Class W offense, and the Court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle in this jurisdiction for any purpose for period of fifteen years from the date ordered by the Court and shall order that the operator's license of such person be revoked for a like period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. Such revocation shall not run concurrently with any jail term imposed. If the Court places such person on probation or suspends the sentence for any reason, the Court shall, as one of the conditions of probation or sentence suspension, order such person not to drive any motor vehicle in this jurisdiction for any purpose for a period of one year unless otherwise authorized by an order issued pursuant to Section 3-1513, and such order of probation shall include as one of its conditions confinement in jail for seven days. [TCR 04-09]

5. For each conviction under this Section, the Court shall, as part of the judgment of conviction, make a finding on the record as to the number of the defendant's prior convictions under this Section and under a city or village ordinance enacted pursuant to this Section or Section 3-1500 in the eight years prior to the date of the current conviction. The defendant shall be given the opportunity to review the record of his or her prior convictions, bring mitigating facts to the attention of the Court prior to sentencing, and make objections on the record regarding the validity of such prior convictions.
6. For purposes of this Section, the eight-year period shall be computed from the date of the prior offense to the date of the offense which resulted in the current conviction and the terms conviction under this Section and prior conviction shall include any conviction under this Section as it existed at the time of such conviction regardless of subsequent amendments to such Section.
7. Any person operating a motor vehicle on the highways or streets of this jurisdiction while his/her operator's license has been revoked pursuant to subdivision (4)(c) of this Section shall be guilty of a Class I offense.
8. Any city or village within the Winnebago Reservation may enact ordinances in conformance with this Section. Upon conviction of any person of a violation of such city or village ordinance, the provisions of this Section with respect to the operator's license of such person shall be applicable the same as though it were a violation of this Section.
9. Any person involved in a motor vehicle accident within the jurisdiction of the Winnebago Tribe may be required to submit to a chemical test of his/her blood, breath, or urine by any peace officer if the officer has reasonable ground to believe that the person was driving or was in actual physical control of a motor vehicle on a public highway on this jurisdiction while under the influence of alcoholic liquor or drugs at the time of the accident. A person involved in a motor vehicle accident subject to the implied consent law of this jurisdiction shall not be deemed to have withdrawn consent to submit to a chemical test of his or her blood, breath, or urine by reason of leaving this jurisdiction. If the person refuses a test under this Section and leaves the jurisdiction for any reason following an accident, he or she shall remain subject to subsection (4) of this Section and Section 3-1506 upon return.
10. Any person who is required to submit to a preliminary breath test or to a chemical blood, breath, or urine test or tests pursuant to this Section shall be advised of (a) the consequences of refusing to submit to such test or tests and (b) the consequences if he or she submits to such test and the test discloses the presence of a concentration of alcohol in violation of subsection (1) of Section 3-1500. Refusal to submit to such test or tests shall be admissible in any action for a violation of Section 3-1500 or a city or village ordinance enacted pursuant to such Section. [TCR 86-31, 86-79, 95-06, 03-194, Neb. Rev. Stat. 60-6197]

3-1502 Driving under influence of alcoholic liquor or drugs; test; additional test; refusal to permit; effect; results of test; available upon request. The peace officer who required a chemical blood, breath, or urine test or tests pursuant to Section 3-1501 may direct whether the test or tests shall be of blood, breath, or urine. The person tested shall be permitted to have a physician of his or her choice evaluate his or her condition and perform or have performed whatever laboratory tests he or she deems appropriate in addition to and following the test or tests administered at the direction of the officer. If the officer refuses to permit such additional test to be taken, then the original test or tests shall not be competent as evidence. Upon the request of the person tested, the results of the test or tests taken at the direction of the officer shall be made available to him or her. [TCR 86-31, 86-79, 03-194, Neb. Rev. Stat. 60-6199]

3-1503 Driving under influence of alcoholic liquor or drugs; chemical test; consent of person incapable of refusal not withdrawn. Any person who is unconscious or who is otherwise in a condition rendering him/her incapable of refusal shall be deemed not to have withdrawn the consent provided by Section 3-1501 and the test may be given. [TCR 86-31, 86-79, 03-194, Neb. Rev. Stat. 60-6200]

3-1504 Driving under influence of alcoholic liquor or drugs; chemical test; violation of statute or ordinance; results; competent evidence; permit; fee.

1. Any test made under Section 3-1501, if made in conformity with the requirements of this Section, shall be competent evidence in any prosecution under a Tribal law or city or village ordinance involving operating a motor vehicle while under the influence of alcoholic liquor or drugs or involving driving or being in actual physical control of a motor vehicle when the concentration of alcohol in the blood or breath is in excess of allowable levels.
2. Any test made under Section 3-1511, if made in conformity with the requirements of this Section, shall be competent evidence in any prosecution involving operating or being in actual physical control of a motor vehicle in violation of Section 3-1509.
3. To be considered valid, tests of blood, breath, or urine made under Section 3-1501 or 3-1511 shall be performed according to methods approved by the Nebraska Department of Health and by an individual possessing a valid permit issued by such department for such purpose, except that a physician, registered nurse, or other trained person employed by a licensed institution or facility or clinical laboratory certified pursuant to the Nebraska Clinical Laboratories Certification Act, the Federal Clinical Laboratory Improvement Act of 1967, as amended, or Title XVIII or XIX of the Federal Social Security Act to withdraw human blood for scientific or medical purposes, acting at the request of a peace officer, may withdraw blood for the purpose of a test to determine the alcohol concentration or the presence of drugs and no permit from the Department shall be required for such person to withdraw blood pursuant to such an order. The Department may to be a health and safety hazard by driving with an excessive concentration of alcohol in his or her body and to deter others from driving while under the influence of alcohol. [TCR 03-194]

3-1505 Driving under influence of alcohol; operator's license; confiscation and revocation; procedures; appeal.

1. Because persons who drive while under the influence of alcohol present a hazard to the health and safety of all persons using the highways, a procedure is needed for the swift and certain revocation of the operator's license of any person who has shown himself or herself to be a health and safety hazard (a) by driving with an excessive concentration of alcohol in his or her body; or (b) by driving while under the influence of alcohol.
2. All requirements and procedures under Neb. Rev. Stat. 60-498.01 regarding the confiscation and revocation of the operator's license of any person driving with an excessive concentration of

alcohol in his or her body or driving while under the influence of alcohol, are hereby incorporated by reference as though fully set forth herein. [TCR 86-31, 86-79, 89-87, 95-06, 03-194, Same as Neb. Rev. Stat. 60-498.01]

3-1506 Driving under influence of alcohol; revocation of impounded operator's license; procedure; reinstatement; fee; eligibility for employment driving permit and ignition interlock device. All requirements and procedures under Neb. Rev. Stat. 60-498.02 regarding revocation of impounded operator's license, reinstatement, fees, eligibility for employment driving permit and ignition interlock devices are hereby incorporated by reference as though fully set forth herein. [TCR 86-31, 86-79, 89-87, 95-28, 03-194, Same as Neb. Rev. Stat 60-498.02]

3-1507 Operator's license revocation decision; notice; contents. All requirements and procedures under Neb. Rev. Stat. 60-498.03 regarding operator's license revocation decisions, notice and contents are hereby incorporated by reference as though fully set forth herein. [TCR 86-31, 86-79, 89-87, 95-06, 03-194, Same as Neb. Rev. Stat. 60-498.02]

3-1508 License revocation; appeal. Any person who feels him/herself aggrieved because of such revocation may appeal therefrom to the Tribal Court. Such appeal shall not suspend the order of revocation unless a stay thereof is allowed by a judge of such Court pending a final determination of the review. If a stay is allowed and the final judgment of a court finds against the person so appealing, the period of revocation shall commence at the time of final judgment of the Court for the full period of the time of revocation. In all Sections of this Title which pertain to alcohol related offenses, the accused MUST, in order to prove intoxication, be given the opportunity to take a chemical test of his or her blood, urine, or breath, for the purpose of determining the amount of alcoholic content in his or her body fluid. [TCR 86-31, 86-79, 89-87, 95-06, 95-28, 98-86, 03-194, Same as Neb. Rev. Stat. 60-6,208]

3-1509 Blood sample; results of chemical test; admissible in criminal prosecution; disclosure required.

1. If the driver of a motor vehicle involved in an accident is transported to a hospital within or outside of this jurisdiction and a sample of the driver's blood is withdrawn by a physician, registered nurse, qualified technician, or hospital for the purpose of medical treatment, the results of a chemical test of the sample shall be admissible in a criminal prosecution under Section 3-1500 to show the alcoholic content of or the presence of drugs or both in the blood at the time of the accident regardless of whether (a) a peace officer requested the driver to submit to a test as provided in Section 3-1501 or (b) the driver had refused a chemical test.
2. Any physician, registered nurse, qualified technician, or hospital in this jurisdiction performing a chemical test to determine the alcoholic content of or the presence of drugs in such blood for the purpose of medical treatment of the driver of a vehicle involved in a motor vehicle accident shall disclose the results of the test (a) to a prosecuting attorney who requests the results for use in a criminal prosecution under Section 3-1500 and (b) to any prosecuting attorney in another jurisdiction who requests the results for use in a criminal prosecution for driving while intoxicated, driving under the influence, or motor vehicle homicide under the laws of the other jurisdiction if the other jurisdiction requires a similar disclosure by any hospital or person in such jurisdiction to any prosecuting attorney in this jurisdiction who requests the results for use in such a criminal prosecution under the laws of the Winnebago Tribe. [TCR 95-28, 03-194, Same as Neb. Rev. Stat. 60-6,210]

3-1510 Person under twenty-one years of age; prohibited acts; enforcement.

1. It shall be unlawful for any person under twenty-one years of age to operate or be in the actual physical control of any motor vehicle:
   A. When such person has a concentration of two-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood but less than the concentration prescribed under subdivision (1)(b) of Section 3-1500, or
   B. When such person has a concentration of two-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath but less than the concentration prescribed under subdivision (1)(c) of Section 3-1500.
2. Enforcement of this Section by law enforcement agencies shall be accomplished only as a secondary action when the driver of a motor vehicle has been cited for a violation of some other offense. [TCR 95-28, 03-194, Same as Neb. Rev. Stat. 60-6,211.01]

3-1511 Implied consent to submit to chemical test; when test administered; refusal; penalty.

1. Any person who operates or has in his/her actual physical control a motor vehicle in this jurisdiction shall be deemed to have given his or her consent to submit to a chemical test or tests of his or her blood or breath for the purpose of determining the concentration of alcohol in such blood or breath.
2. Any peace officer who has been duly authorized to make tests for violations of traffic laws of this jurisdiction or of ordinances of any city or village may require any person under twenty-one years of age who has been cited for some offense to submit to a chemical test or tests of his/her blood or breath when the officer has reasonable grounds to believe that such person was driving or was in the actual physical control of a motor vehicle in this jurisdiction in violation of Section 3-1510. Such peace officer may require such person to submit to a preliminary breath test. Any person who refuses to submit to such preliminary breath test or whose preliminary breath test results indicate an alcohol concentration in violation of Section 3-1510 shall be placed under arrest.
3. Any person arrested as provided in this Section may, upon the direction of a peace officer, be required to submit to a chemical test or tests of his/her blood or breath for a determination of the concentration of alcohol. If the chemical test discloses the presence of a concentration of alcohol in violation Section 3-1510, the person shall be found guilty of an infraction and upon conviction shall have his or her operator's license impounded by the Court for thirty days for each violation of Section 3-1510. Any person who refuses to submit to such test or tests required pursuant to this Section shall not have the tests taken but shall be found guilty of an infraction and upon conviction shall have his or her operator's license impounded by the Court for ninety days for refusal to submit to such tests required pursuant to this Section. [TCR 95-28, 03-194, Same as Neb. Rev. Stat. 60-6,211.02]

3-1512 Impounded operator's license; sealing of record; when; operation of motor vehicle authorized.

1. If a person whose operator's license has been impounded pursuant to Section 3-1511 has had no other violation of Section 3-1510 or 3-1511 during the time of impoundment of the operator's license, the record of such impoundment shall be sealed. The Court shall not report this infraction to the Nebraska Department of Motor Vehicles.
2. Any person whose operator's license is impounded pursuant to Section 3-1511 may be allowed by the Court to operate a motor vehicle in order to drive to and from his/her place of employment. [TCR 95-28, 03-194, Same as Neb. Rev. Stat. 60-6,207]

3-1513 Ignition interlock device; court order authorized; issuance of restricted Class 0 license; prohibited act; violation; penalty.

1. If an order of probation is granted under Section 3-1500 or 3-1501, the Court may order the defendant to install an ignition interlock device of a type approved by the Nebraska Director of Motor Vehicles on each motor vehicle operated by the defendant. Any order issued by the Court pursuant to this Section shall not take effect until the defendant is eligible to operate a motor vehicle pursuant to subsection (2) of Section 3-1506. The device shall, without tampering or the intervention of another person, prevent the defendant from operating the motor vehicle when the defendant has an alcohol concentration greater than the levels prescribed in Section 3-1500.
2. If the Court orders an ignition interlock device, the Court shall order the Department of Motor Vehicles to issue to the defendant a restricted Class O license as provided in Neb. Rev. Stat. 60-4,118 which indicates that the defendant is only allowed to operate a motor vehicle equipped with an ignition interlock device. The order shall remain in effect for a period of time as determined by the Court not to exceed the maximum term of revocation which the Court could have imposed according to the nature of the violation.
3. A person who tampers with or circumvents an ignition interlock device installed under a Court order while the order is in effect or who operates a motor vehicle which is not equipped with an ignition interlock device in violation of a Court order made pursuant to this Section shall be guilty of a Class II offense.
4. The director shall adopt and promulgate rules and regulations to approve ignition interlock devices and the means of installation of the devices. [TCR 95-28, 03-194, Same as Neb. Rev. Stat. 60-6,211.05]

3-1514 Careless driving, defined; penalty. Any person who drives any motor vehicle in this jurisdiction carelessly or without due caution so as to endanger a person or property shall be guilty of careless driving. A violation of this Section shall be an infraction. [TCR 86-31, 86-79, 89-87, 03-194, Same as Neb. Rev. Stat. 60-6,212]

3-1515 Reckless driving, defined; penalty. Any person who drives any motor vehicle in such a manner as to indicate an indifferent or wanton disregard for the safety of persons or property shall be guilty of reckless driving. A violation of this Section shall be an infraction. [TCR 86-31, 86-79, 89-87, 03-194, Same as Neb. Rev. Stat. 60-6,213]

3-1516 Willful reckless driving, defined. Any person who drives any motor vehicle in such a manner as to indicate a willful disregard for the safety of persons or property shall be guilty of willful reckless driving. [TCR 86-31, 86-79, 03-194, Same as Neb. Rev. Stat. 60-6,214]

3-1517 Willful reckless driving; first offense; penalty. Every person convicted of willful reckless driving shall, upon a first conviction, shall be guilty of a Class III offense, and the Court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle for any purpose for a period of not less than thirty days nor more than one year from the date ordered by the Court and shall order that the operator's license of such person be revoked for a like period. The revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. The revocation shall not run concurrently with any jail term imposed. [TCR 86-31, 86-79, 03-194, Same as Neb. Rev. Stat. 60-6,216]

3-1518 Reckless driving or willful reckless driving; second offense; penalty. Upon a second conviction of any person for either reckless driving or willful reckless driving, the person shall be guilty of a Class II offense, and the Court shall order the person so convicted, as part of the judgment of conviction, not to drive a motor vehicle for any purpose for a period of not less than sixty days nor more than two years from the date ordered by the Court and shall order that the operator's license of such person be revoked for a like period. The revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. The revocation shall not run concurrently with any jail term imposed. If the motor vehicle which such person was operating in such reckless or willful reckless manner is registered in the name of such person, the motor vehicle shall be impounded in a reputable garage by the Court for a period of not less than two months nor more than one year at the expense and risk of the owner thereof, except that any motor vehicle so impounded shall be released to the holder of a bona fide lien thereon, executed prior to such impounding, when possession of such motor vehicle is requested in writing by such lienholder for the purpose of foreclosing and satisfying the lien. [TCR 86-31, 86-79, 03-194, Same as Neb. Rev. Stat. 60-6,217]

3-1519 Reckless driving or willful reckless driving; third and subsequent offenses; penalty. Upon a third or subsequent conviction of any person for either reckless driving or willful reckless driving, the person shall be guilty of a Class I offense. The Court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle for any purpose for a period of one year from the date ordered by the Court and shall order that the operator's license of such person be revoked for a like period. The revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. The revocation shall not run concurrently with any jail term imposed. [TCR 86-31, 86-79, 03-194, Same as Neb. Rev. Stat. 60-6,218]

TITLE 4
JUVENILE PROCEDURE
(As redesignated July 1, 1989)

SUMMARY OF CONTENTS

SECTION		ARTICLE-PAGE
1.	TABLE OF REVISIONS	ii
2.	TABLE OF CONTENTS	iii
3.	ARTICLE 1: GENERAL PROVISIONS	1-1
4.	ARTICLE 2: EMERGENCY CUSTODY	2-1
5.	ARTICLE 3: ADJUDICATOIN	3-1
6.	ARTICLE 4: DISPOSITION	4-1
7.	ARTICLE 5: CHILD ABUSE	5-1
8.	ARTICLE 6: TERMINATION OF PARENTAL RIGHTS	6-1
9.	ARTICLE 7: ADOPTIONS	7-1
10.	ARTICLE 8: DEVELOPING FOSTER CARE HOMES	8-1
11.	ARTICLE 9: (Repealed 2008)	9-1
12.	ARTICLE 10: RULES OF JUVENILE PROCEDURE	10-1
13.	ARTICLE 11: GRANDPARENT RIGHTS	11-1

TITLE 4
TABLE OF REVISIONS

The following table is included in this title as a guide for determining whether each article properly reflects the current version. This table will be updated with the revision of each article.

Through usage and supplementation, pages in bound titles can be inserted and removed when sections are revised on an article-by-article basis. This table should be placed before the Table of Contents in the title.

The "Article" column lists each article, and the "Section" column lists any corresponding sections that have been revised, in sequence. The "Revised Date" column reflects the effective date of the revision (e.g., "6/20/15"). If an article is not listed in the table, it has not been revised since the December 2015 Winnebago Tribal Code update and distribution.

Article	**Section**	**Revised Date**

TITLE 4
JUVENILE PROCEDURE
(As redesignated July 1, 1989)

ARTICLE 1
GENERAL PROVISIONS

4-100 Citation.
4-101 Purpose.
4-102 Definitions.
4-103 Place of sitting.
4-104 Juvenile Court established.
4-105 Jurisdiction.
4-106 Court authority.
4-107 Indian child welfare transfers from Tribal Courts.
4-108 Child welfare transfers to tribal or state courts.
4-109 Court support staff.
4-110 Notice of legal rights.
4-111 Basic rights.
4-112 Warrants and custody orders.
4-113 Full faith and credit.
4-114 Admissibility of evidence in other proceedings.
4-115 Expungement.
4-116 Contempt of court.
4-117 Medical examination.
4-118 Fingerprints.
4-119 Rules of procedure.
4-120 Expenditure of funds.
4-121 Procedure.
4-122 Prosecution; criminal charge or Juvenile Court petition; determination; considerations.
4-123 Juvenile charged in court other than Juvenile Court; transfer to Juvenile Court; procedure.
4-124 Pre-transfer report.
4-125 Orders for support.
4-126 Prosecutor's duties.
4-127 Inspection of court records.
4-128 Law enforcement records.
4-129 Child and family services.
4-130 Identity confidential.
4-131 Exclusion of certain statement by alleged delinquent.
4-132 Voluntary foster care authorized.
4-133 Required Findings by a Court for Removal.
4-134 Reasonable Efforts.
4-135 Winnebago Kinship System.

TITLE 4
ARTICLE 2
EMERGENCY CUSTODY

4-201 Taking a minor into custody.
4-202 Notification of parents.
4-203 Notification of Court officers.
4-204 Release of detained child.
4-205 Special release rule for major offenses.
4-206 Court ordered release.
4-207 Extension of detention period.
4-208 Detention and shelter.
4-209 Emergency shelter in child's home.
4-210 Court ordered medical treatment.
4-211 Court ordered commitment for observation.
4-212 Search warrants for the protection of children.
4-213 Preliminary inquiry: criteria for detention or shelter care.
4-214 Place of detention or shelter care.
4-215 Standards for shelter care and detention facilities.

TITLE 4
ARTICLE 3
ADJUDICATION

4-301 Court intake.
4-302 Prosecutor's (presenting officer's) intake.
4-303 Diversion by contract.
4-304 Diversion contract inadmissible.
4-305 Diversion by consent decree.
4-306 Limitations on diversions.
4-307 Guardian ad litem appointments.
4-308 Guardian ad litem duties.
4-309 Adjudicatory hearing.
4-310 Mentally ill and developmentally disabled children.
4-311 Consent decree.
4-312 Dismissal of petition.
4-313 Sustaining petition
4-314 Temporary orders.

TITLE 4
ARTICLE 4
DISPOSITION

4-401 Pre-dispositional report.
4-402 Treatment plan.
4-403 Dispositional hearing.
4-404 Hearing purpose.
4-405 Hearing informal.
4-406 Medical examination.
4-407 Continuance.
4-408 Order of protection.
4-409 Placement preferences.
4-410 Neglected or dependent child or in-need-of-care; disposition.
4-411 Child-in-need-of-supervision; disposition.
4-412 Delinquent child; disposition.
4-413 Legal custody; guardianship.
4-414 Probation for delinquents and children in need of supervision.
4-415 Violation of probation.
4-416 New hearing authorized.
4-417 Continuing jurisdiction.
4-418 Permanency Hearings.
4-419 Guardianships as Recommended by the Department for permanence.

TITLE 4
ARTICLE 5
CHILD ABUSE

4-501 Legislative purpose.
4-502 Definitions.
4-503 Persons required to report child abuse or neglect.
4-504 Required report of postmortem investigation.
4-505 Evidence of abuse.
4-506 Temporary protective custody.
4-507 Reporting procedures.
4-508 Action upon receipt of report.
4-509 Child protection teams.
4-510 Immunity from liability.
4-511 Child abuse and child neglect diversion program.
4-512 Evidence not privileged.
4-513 Court proceedings; guardian ad litem.
4-514 Central registry.
4-515 Confidentiality of records.

TITLE 4
ARTICLE 6
TERMINATION OF PARENTAL RIGHTS

4-601 Motion for termination of parental rights.
4-602 Appointment of counsel.
4-603 No jury trial.
4-604 Abandonment.
4-605 Criteria for termination.
4-606 Standard of proof.
4-607 Voluntary termination of parental rights.
4-608 Interpreter for relinquishment of parental rights and consent to adoption.
4-609 Review of child's disposition following termination of the parent-child legal relationship.
4-610 Expert testimony.
4-611 Effect of decree.
4-612 Appeals.
4-613 Traditional custodians' and grandparents' rights.

TITLE 4
ARTICLE 7
ADOPTIONS

4-701 Jurisdiction over adoptions.
4-702 Purpose of adoptions.
4-703 Types of adoptions.
4-704 In-camera determination of enrollment eligibility.
4-705 Eligibility for statutory adoption.
4-706 Eligibility to adopt by statutory process.
4-707 Consent to statutory adoption.
4-708 Voluntary relinquishment.
4-709 When consent of parents unnecessary.
4-710 Notice of hearing for adoption without consent.
4-711 Consent of child.
4-712 Petition.
4-713 Investigation.
4-714 Adoption hearing.
4-715 Report and final decree of adoption.
4-716 Contents of adoption order.
4-717 Effect of final decree of statutory adoption.
4-718 Records and hearings confidential.
4-719 Certificates of adoption.
4-720 Foreign decree.
4-721 Adoption of adults.
4-722 Appeals.
4-723 Customary Adoptions.

TITLE 4
ARTICLE 8
DEVELOPING FOSTER CARE HOMES

4-801 Responsibility.
4-802 Licensing foster family homes.
4-803 Basic standard for foster families.
4-804 Basic requirements of foster families.
4-805 Funding for foster children's needs.
4-806 Physical facilities.
4-807 Family composition.
4-808 Personal characteristics.
4-809 Foster parenting abilities.

TITLE 4
ARTICLE 9
INCOME WITHHOLDING FOR CHILD SUPPORT ACT
(Repealed 2008) [TCR 08-79]

TITLE 4
ARTICLE 10
RULES OF JUVENILE PROCEDURE

Rule 1 Scope.
Rule 2 Purpose and construction.
Rule 3 Attorney or advocate of record.
Rule 4 Notice.
Rule 5 Service of summons.
Rule 6 Summons form.
Rule 7 When summons unnecessary.
Rule 8 Additional parties to be summoned.
Rule 9 Failure to appear.
Rule 10 Petition contents.
Rule 11 Petition form.
Rule 12 Adoption petition.
Rule 13 Juvenile offender commencement of action petition.
Rule 14 Responsive pleadings and motions.
Rule 15 Parties.
Rule 16 Discovery.
Rule 17 Pre-trial conference.
Rule 18 Emergency orders.
Rule 19 Hearings.
Rule 20 Adoption hearing.
Rule 21 Dependency and neglect and child-in-need-of–care dispositional hearing.
Rule 22 Jury Trial.
Rule 23 Termination of parental rights hearing.
Rule 24 Record of proceedings.
Rule 25 Motions for a new trial or rehearing.
Rule 26 Motions for arrest or modification of judgment.
Rule 27 Shelter and detention.
Rule 28 Disqualification or disability of judge.
Rule 29 Evidence.
Rule 30 Clerical mistakes.
Rule 31 Explanation of rights at first appearance (juvenile offenders); child-in-need-of supervision.
Rule 32 Insanity at time of commission of juvenile offense.
Rule 33 Determination of competency or capacity to stand trial.
Rule 34 Fingerprinting or photographing of minor.
Rule 35 Mental or physical examination.
Rule 36 Probation revocation hearing.
Rule 37 Dispositional hearing.
Rule 38 Appeals.
Rule 39 Stay pending appeal

TITLE 4
ARTICLE 11
GRANDPARENT RIGHTS
(As adopted August 28, 2015)

4-1101 Purpose.
4-1102 Application.
4-1103 Scope.
4-1104 Grandparent Notification.
4-1105 Grandparent Input.
4-1106 Grandparent Visitation.
4-1107 Change of Grandchild’s Domicile; Notice to Grandparent.
4-1108 Emergency Medical Care and Grandparent Medical Consent.
4-1109 Grandparent Medical Consent Authorization Affidavit.

TITLE 4
JUVENILE PROCEDURE
(As redesignated July 1, 1989)

ARTICLE 1
GENERAL PROVISIONS

4-100 Citation.
4-101 Purpose.
4-102 Definitions.
4-103 Place of sitting.
4-104 Juvenile Court established.
4-105 Jurisdiction.
4-106 Court authority.
4-107 Indian child welfare transfers from Tribal Courts.
4-108 Child welfare transfers to tribal or state courts.
4-109 Court support staff.
4-110 Notice of legal rights.
4-111 Basic rights.
4-112 Warrants and custody orders.
4-113 Full faith and credit.
4-114 Admissibility of evidence in other proceedings.
4-115 Expungement.
4-116 Contempt of court.
4-117 Medical examination.
4-118 Fingerprints.
4-119 Rules of procedure.
4-120 Expenditure of funds.
4-121 Procedure.
4-122 Prosecution; criminal charge or Juvenile Court petition; determination; considerations.
4-123 Juvenile charged in court other than Juvenile Court; transfer to Juvenile Court; procedure.
4-124 Pre-transfer report.
4-125 Orders for support.
4-126 Prosecutor's duties.
4-127 Inspection of court records.
4-128 Law enforcement records.
4-129 Child and family services.
4-130 Identity confidential.
4-131 Exclusion of certain statement by alleged delinquent.
4-132 Voluntary foster care authorized.
4-133 Required Findings by a Court for Removal.
4-134 Reasonable Efforts.
4-135 Winnebago Kinship System.

4-100 Citation. This Act may be cited as the Juvenile Procedure Act. [TCR 86-79]

4-101 Purpose. The purposes of this Act are to:

1. Secure for each child subject to this Act such care and guidance, preferably in his/her own home, as will best serve his/her welfare and the interests of the Tribe and society in general;
2. Preserve and strengthen the ties between the child and his/her Tribe whenever possible;
3. Preserve and strengthen family ties whenever possible and to strengthen and improve the home and its environment when necessary;
4. Remove a child from the custody of his/her parents and traditional custodians only when his/her welfare and safety or the protection of the public would otherwise be endangered;
5. Secure for any child removed from the custody of his/her parents the necessary care, guidance and discipline to assist him/her in becoming a responsible and productive member of his/her Tribe and society in general;
6. To discourage delinquent acts and to protect the community's interest by providing supervision, care and rehabilitation; and
7. To ensure that off-reservation courts will be willing to return Tribal children to the reservation by establishing juvenile court rules and procedures. In order to carry out these purposes, the provisions of this Act shall be liberally construed. [TCR 86-79]

4-102 Definitions. Unless the context otherwise requires, as used in this Act, the following words mean as follows:

1. "Abandon" means that a parent leaves a child without adequate communication or fails to support a child and there is no indication of the parent(s) willingness to assume his/her parental roles for a period exceeding two years.
2. "Adjudicatory hearing" means a hearing to determine whether the allegations of a petition alleging a child to be neglected, deprived, in need of supervision, in need of care or delinquent filed pursuant to this Act are supported by the evidence.
3. "Adult" means a person nineteen years of age or over; except that any person alleged to have committed a delinquent act before he/she became nineteen years of age shall be considered a child under this Act for the purpose of adjudication and disposition of the delinquent act, or concerning a child for whom a petition has been filed for his/her adoption other than under this Title, shall be referred to as a child.
4. "Aunt" Means those female relatives referred to in the Winnebago kinship system as Cuwi, which are the sisters of the child's father. (See Winnebago Kinship System chart in 4-135)
5. "Biological Parent" means the natural mother (Nani) or father (Jagi) of the child. A biological parent will have preference over an "extended family" parent which are also termed Nani and Jagi under the Winnebago Kinship System. See chart in 4-135.
6. "Brother" means:
   A. Any male child of the biological mother and father;
   B. Any male child of the child's Nani (mother's sister);
   C. Any male child of the child's Jaji (father's brother); or
   D. Any other male person, who, by virtue of an adoption either of themselves or of a member of their family pursuant to the laws of any Indian tribe or state, would hold the relationship of a sibling with the person in question. (See Winnebago Kinship System chart in 4-135).
7. "Brother-in-law" means the husband of a sister by blood or marriage.
8. "Child" means a person under nineteen years of age.
9. "Child care institution" means a facility designed for the care of children licensed or approved pursuant to Tribal law, or, if outside the Tribal jurisdiction, by the law of the jurisdiction in which such facility is physically located, and which accommodates no more than 25 children.
10. "Child-in-need-of-supervision" means any child:
    A. Who has repeatedly disobeyed reasonable and lawful commands or directives of his/her parent, legal guardian, or other custodian; or
    B. Who is willfully and voluntarily absent from his/her home without the consent of his/her parent, guardian, or legal custodian for a substantial period of time, or without intent to return; or
    C. Who deports him/herself so as to injure or endanger seriously the morals or health of him/herself or others; or
    D. Who, being subject to compulsory school attendance, is willfully, voluntarily, and habitually absent from school in violation of law.
11. "Child placement agency" means an agency designed for the care or placement of law of the jurisdiction in which such facility is physically located or both children licensed or approved pursuant to Tribal law, or, if outside the Tribal jurisdiction, by the law of the jurisdiction in which such facility is physically located, or both.
12. "Commit" means to transfer legal custody.
13. "Cousin" is not a term used in the Winnebago kinship system. (See Winnebago Kinship System chart in 4-135).
14. "Custody" means guardianship of the person.

15. "Custodian" means a person, other than a parent or guardian, to whom legal custody of the child has been given but does not include the person who has only physical custody.
16. "Court" means the Winnebago Tribal Juvenile Court when exercising jurisdiction under this Code.
17. "Court judge" means any duly appointed judge of the Winnebago Tribal Juvenile Court when exercising jurisdiction under this Code.
18. "Delinquent child" means a child who:
    A. Has violated any federal, tribal, or state law, excepting traffic statutes or ordinances, hunting or fishing statutes or ordinances, or any lawful order of the Court made pursuant to this Act; or
    B. Has habitually violated any traffic, hunting or fishing statutes or ordinances, or lawful orders of the Court made under this Act.
19. "Delinquent act" means an act, which, if committed by an adult, is designated a crime under the Winnebago Tribal Law and Order Code.
20. "Department" means the tribal child and family services department.
21. "Deprivation of custody" means the transfer of legal custody by the Court from a parent or previous legal custodian to another person, agency, or institution.
22. "Detention" means the placement of a minor in a physically restrictive facility.
23. "Dispositional hearing" means a hearing held after an adjudication hearing has found a child to be deprived, neglected, in-need-of-care, in-need-of-supervision, or delinquent, in which the Court must determine what treatment should be ordered for the family and the child, and what placement of the child should be made during the period of treatment. Such hearing may be part of the proceeding which includes the adjudication hearing or it may be held at a time subsequent to the adjudication hearing.
24. "Extended family" (for placement options) means a Tribal member who has reached the age of nineteen and who is the minor's grandparent (Coka, Gaga), kinship parent, Nani (sister of the child's mother) or Jagi (Brother of the child's father), aunt or uncle,(Cuwi, pronounced "Chu wee", is the sister of the child's father and Tega is the brother of the child's mother), brother or sister, brother-in-law or sister-in-law, niece or nephew, or stepparent, or is recognized by Tribal custom as an extended family member. For a complete description of who may be considered "Extended Family" see Winnebago Kinship Chart contained in Section 4-135..
25. "Father" includes the biological father of the child or any other person in the Winnebago kinship system referred to as Jagi. (See Winnebago Kinship System chart in 4-135).
26. "Foster family home" means an individual or family facility for the care of not more than ten children in a family-type setting, licensed or approved pursuant to the Tribal law, or, if outside the Tribal jurisdiction, by the law of the jurisdiction in which such facility is physically located or both, or a group care or group home facility, licensed or approved pursuant to the Tribal law, or, if outside the Tribal jurisdiction, by the law of the jurisdiction in which such facility is physically located or both.
27. "Grandparent" means:
    A. A biological grandparent referred to in the Winnebago kinship system as Coka (grandfather) or Gaga (grandmother);
    B. The brothers and sisters of a biological grandparent, and their spouses;
    C. Any other person, who, by virtue of an adoption either of themselves or a member of their family pursuant to the laws of any Indian Tribe or state, would come within the terms of subparagraphs (A) or (B) of this subsection. (See Winnebago Kinship System chart in 4-135).
28. "Guardian" means a person other than the minor's parent who is by law responsible for that minor (but not for the minor's property).
29. "Guardian ad litem" means an adult appointed by the Court to prosecute or defend for a minor in any proceeding to which he/she may be a party.

30. "Guardianship of the person" means legal custody or the duty and authority vested by law to make major decisions affecting a child including, but not limited to:
    A. The authority to consent to marriage, to enlistment in the Armed Forces, and to extraordinary medical and surgical treatment; and
    B. The authority to represent a child in legal actions and to make other decisions of substantial legal significance concerning a child; and
    C. The authority to consent to the adoption of a child when the parent-child relationship has been terminated by judicial decree or the death of the parents; and
    D. The rights and responsibilities of the physical and legal care, custody, and control of a child when legal custody has not been vested in another person, or agency, or institution; and
    E. The duty to provide food, clothing, shelter, ordinary medical care, education, and discipline for the child. Guardianship of the person or a child, or legal custody of a child, may be taken from its parents only by Court action.
31. "Halfway house" means group care facilities for children who have been placed on probation or parole by virtue of being adjudicated delinquent, or in need of supervision under this Title.
32. "Indian custodian" means an adult Tribal member to whom temporary physical care, custody, and control has been transferred by the parent of such minor.

33. "Juvenile Court" or "Court" means the juvenile division of the Tribal Court or the Juvenile Court or C.F.R. court established for other Indian tribes, or a state Juvenile Court as is appropriate from the context.
34. "Juvenile offender" means a person who commits a delinquent act prior to his/her nineteenth birthday.
35. "Least restrictive alternative." This term directs the Court to select the least drastic method of achieving its goal; the restrictions placed on the child must be reasonably related to the Court's objectives and must be the least restrictive way of achieving the objective that any person held in detention before trial is held only to insure that the person will not leave the area; therefore, the only restraint which should be imposed for that purpose is the restriction on his/her freedom of movement. If the person will appear, he/she should be released from custody until the hearing. No other restriction, such as mail censorship or being placed in solitary confinement, is related to the stated purpose of pretrial detention.
36. "Legal custody" means the right to the care, custody, and control of a child and the duty to provide food, clothing, shelter, ordinary medical care, education, and discipline for a child and, in an emergency, to authorize surgery or other extraordinary care. Legal custody may be taken from a parent only by Court action.
37. "Minor" means:
    A. A person under nineteen years of age.
    B. A person nineteen years of age or older concerning whom proceedings are commenced in Juvenile Court prior to his/her nineteenth (19th) birthday.
    C. A person nineteen years of age or older who is under the continuing jurisdiction of the Juvenile Court.
    D. A person who has not been legally emancipated.
38. "Mother" means the biological mother of the child or any person referred to as Nani in the Winnebago kinship system. (See Winnebago Kinship System chart in 4-135).
39.
40. "Neglected child" or "dependent child" or "minor-in-need-of-care," means a child:
    A. Whose parent, guardian, or legal custodian has subjected him/her to mistreatment or abuse, or whose parent, guardian, or legal custodian has suffered or allowed another to mistreat or abuse the child without taking lawful means to stop such mistreatment or abuse and prevent it from recurring; or

B. Who lacks proper parental care through the actions or omissions of the parent, guardian, or legal custodian; or
C. Whose environment is injurious to his/her welfare; or
D. Whose parent, guardian, or legal custodian fails or refuses to provide proper or necessary subsistence, education, medical care, or any other care necessary for his/her health, guidance, or well-being, whether because of the fault of the parent, guardian, or legal custodian, or because the parent, guardian or legal custodian does not have the ability or resources to provide for the child; or
E. Who is homeless, without proper care, or not domiciled with his/her parent, guardian, or legal custodian, due to, or without the fault of his/her parent, guardian, or legal custodian; or
F. Whose parent, guardian, or legal custodian has abandoned him/her without apparent intent to return, or who has placed him/her informally with any other person, and has not contributed to the support of the child or established personal contact with the child for a period in excess of six months; or
G. Has no parent(s), guardian(s), or custodian(s) available and willing to care for him/her; or
H. Has been sexually abused; or
I. Has committed delinquent acts as a result of parental pressure, guidance, or approval; or
J. Has been emotionally abused or neglected.

41. "Nephew" means the male child of a Cuwi (father's sister), whether by blood, marriage, or adoption. In a non-Winnebago setting this person would be considered a cousin to the child. (See Winnebago Kinship System chart in 4-135).
42. "Niece" means the female child of Cuwi (father's sister), whether by blood, marriage, or adoption. In a non-Winnebago setting this person would be considered a cousin to the child. (See Winnebago Kinship System chart in 4-135).
43. "Parent" includes a biological or adoptive parent and any person designated a Nani or Jaji under the Winnebago kinship system, but does not include persons whose parental rights have been terminated, however, it does include an unwed father whose paternity has been acknowledged and accepted under the Tribe's enrollment standards. If a reference in this Code is specific to biological parent, the term "biological parent" will be used.
44. "Protective supervision" means a legal status created by Court order under which the child is permitted to remain in his/her own home under the supervision of the Juvenile Court through the Tribal social services department during the period during which treatment is being provided to the family by the Tribal social services department or other agencies designated by the Court.
45. "Residual parental rights and responsibilities" means those rights and responsibilities remaining with the parent after legal custody, or guardianship of the person of said child has been vested in another person, agency, or institution, but where parental rights have not been terminated, including, but not necessarily limited to, the responsibility for support, the right to consent to adoption, the right to inherit from the child, the right to determine the child's religious affiliation, and the right to reasonable visitation with the child unless restricted by the Court.
46. "Shelter" means a facility for the temporary care of a child in physically unrestricting facilities pending Court disposition, or execution of a Court order for emergency or temporary placement.
47. "Sibling" means any "sister" or "brother". (See Winnebago Kinship System chart in 4-135).
48. "Sister" means:
    A. Any female child of the biological mother or father,
    B. Any female child of the child's Nani (mother's sister(s)),
    C. Any female child of the child's Jaji (father's brother(s)), or
    D. Any other female person, who, by virtue of an adoption either of themselves or of a member of their family pursuant to this Act or the laws of any Indian tribe or state, would have the relationship of a sibling with the person in question. (See Winnebago Kinship System chart in 4-135).

49. "Sister-in-law" means the wife of a brother by blood or marriage.
50. "Stepparent" means a person married to a person termed as a Nani or a Jagi under the Winnebago kinship system. (See Winnebago Kinship System chart in 4-135).

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51. "Termination of parental rights" or "termination of the parent-child legal relationship" means the permanent elimination by Court order of all parental rights and duties, including residual parental rights and duties, but not including the child's right to inherit from the parents whose rights have been terminated.
52. "Toto" means the older brother of the child.
53. "Traditional custodian" means those relatives of the child other than the parents, who, by force of the traditions, customs, and common law of the Tribe have the rights, duties, and responsibilities of assisting the parents in rearing the child and providing for his/her support.
54. "Transfer proceeding" means any proceeding in the Tribal Court to grant, accept, or decline transfer of any children's case from or to the courts of any Indian tribe or state whenever such transfer is authorized by tribal, federal, or state law.
55. "Tribal Court" means the adult court for the Winnebago Tribe of Nebraska.
56. "Winnebago Kinship System" means the traditional family system of the Winnebago people as illustrated in the Winnebago Kinship System chart contained within the 4-135 of this Title 4. [TCR 86-79, 15-127]

4-103 Place of sitting. The juvenile division of the Tribal Court shall maintain offices and sit in the same place the Tribal Court sits, provided, that the juvenile division, in a transfer proceeding or where otherwise necessary and expedient in the interest of justice and economy, with the approval of the Chief Judge, may sit anywhere within the territorial limits of the United States. [TCR 86-79]

4-104 Juvenile Court established. There is hereby created and established within the Tribal Court, a Juvenile Court whose powers and duties are set forth in this Act. Any judge of the Tribal Court may be assigned by the Chief Judge to hear cases in the juvenile division of the Court. [TCR 86-79]

4-105 Jurisdiction.

1. Except as otherwise provided by law, the Juvenile Court shall have exclusive jurisdiction in proceedings:
   A. Concerning any child in need of supervision.
   B. Concerning any child who is delinquent, neglected or dependent, or in need of care.
   C. Concerning any transfer proceeding to or from a court of another sovereign in a children's case.
   D. To determine the legal custody of any child or to appoint a guardian of the person or legal custodian of any child who comes within the Juvenile Court's jurisdiction.
   E. For the issuance of orders of support of minor children.
   F. To determine the parentage of a child and to make an order of support in connection therewith.
   G. For adoptions as set forth in Section 4-701.
   H. For judicial consent to the marriage, employment or enlistment of a child, when such consent is required by law.
   I. For the treatment or commitment of a mentally ill or developmentally disabled child who comes within the Court's jurisdiction.
2. The Court may issue temporary orders providing for protection, support, or medical or surgical treatment as it deems in the best interest of any child concerning whom a petition has been filed prior to adjudication or disposition of his/her case.

3. Nothing in this Section shall deprive the Tribal Court of jurisdiction to appoint a guardian for a child nor of jurisdiction to determine the legal custody of a child upon writ of habeas corpus or when the question of legal custody is incidental to the determination of a case in the Tribal Court except that:
   A. If a petition involving the same child is pending in Juvenile Court or if continuous jurisdiction has been previously acquired by the Juvenile Court, the Tribal Court shall certify the question of legal custody to the Juvenile Court; and
   B. The Tribal Court at any time may request the Juvenile Court to make recommendations pertaining to guardianship or legal custody.
4. Where a custody award has been made in the Tribal Court in a dissolution of marriage action or another proceeding and the jurisdiction of the Tribal Court has been established, the Juvenile Court may take jurisdiction in a case involving the same child if he/she is dependent or neglected or otherwise comes within the jurisdiction set forth herein.
5. Except as otherwise provided by law, the Juvenile Court shall have jurisdiction in proceedings concerning any adult:
   A. Who induces, aids or encourages a child to violate any federal, Tribal or state law; or
   B. Who abuses, ill-treats, neglects, or abandons a child who comes within the Court's jurisdiction; or
   C. Who violates any duly-served order of the Court.
6. The Court's jurisdiction extends to any juvenile offender, unless the Court transfers jurisdiction to the Tribal Court pursuant to the tribal transfer proceedings. [TCR 86-79, 15-127]

4-106 Court authority.

1. Cooperation and Grants. The Court is authorized to cooperate fully with any federal, state, or Tribal public or private agency in order to participate in any diversion, rehabilitation or training programs and to receive grants-in-aid to carry out the purposes of this Code.
2. Social Services. The Court shall utilize such social services as may be furnished by any Tribal, federal, or state agency (provided that it is economically administered without unnecessary duplication and expense).
3. Contracts. The Court may negotiate a contract with Tribal, federal or state agencies and departments on behalf of the Tribal Council for the care and placement of minors whose status is adjudicated under this Court.
4. Transfer from State Courts. The Court may accept or decline state court transfers of child custody proceedings. [TCR 86-79]

4-107 Indian child welfare transfers from Tribal Courts.

1. Any Tribal Court may transfer to the Juvenile Court herein any children's case concerning any child who is a member or eligible for membership in the Tribe, or whose parents or guardian reside within the jurisdiction of the Tribe, if the Juvenile Court finds that the transfer would not be detrimental to the best interest of the child.
2. The Juvenile Court shall determine whether the transfer to the Tribe's jurisdiction would be detrimental to the best interest of the child in a transfer hearing initiated by the Tribe after an order of transfer is received by the court clerk. In making such determination, the Court may consider:
   A. Whether the child or its family will be in need of special services for physical or mental disease or defect which the Tribe and its resources are unable to adequately provide; and
   B. If transfer is tendered prior to adjudication whether the witnesses necessary to adjudicate the case will be available. If the witnesses will probably not appear, the Court should decline to accept the transfer until after the adjudication is completed; and

C. Any other matters which may adversely affect the Tribe's ability to provide treatment or necessary services to the family.

3. A Tribal Court transferring a case to the Tribe's jurisdiction under subsection (1) of this Section shall transmit all documents and legal and social records, or certified copies thereof, pertaining to the case to the Tribal Juvenile Court, which shall proceed with the case as if a petition has been originally filed or the adjudication originally made in the Tribal Court. [TCR 86-79]

4-108 Child welfare transfers to tribal or state courts.

1. The Tribal Juvenile Court, in its discretion, is authorized to transfer any children's case arising within the Tribal jurisdiction, said child not being a member or eligible for membership in the Tribe, to the court of the child's Indian tribe, or if the child is a non-Indian, to the courts of the state where the child is a resident, or domiciled, upon the petition of the Tribal prosecutor, either parent, a custodian or guardian, the child's tribe, or an appropriate official of the child's state.
2. In making such transfers, the Tribal Court may consider:
   A. The best interests of the child; and
   B. Any special needs or mental or physical disease or defects of the child and family and the ability of the Tribe and the receiving jurisdiction to meet those needs; and
   C. If transfer is requested prior to adjudication, whether witnesses necessary to the adjudication can attend in the receiving jurisdiction; and
   D. Emotional, cultural, and social ties of the child and its family; and
   E. The likelihood that the same child and family would return to the Tribal jurisdiction within reasonable time and come before the Juvenile Court again.
3. Upon entering an order transferring a case as provided in this Section, the Court shall serve a certified copy of the order of transfer, the legal case file, and any social or police reports concerning the child's case to the court clerk of the receiving jurisdiction by certified mail, return receipt requested. The Juvenile Court may retain physical custody of the child pending an order or notice of acceptance from the receiving jurisdiction, and upon receiving such order on notice, may close the case file and dismiss the case subject to any necessary order for the protection of the child until completion of physical transfer to the receiving jurisdiction. [TCR 86-79]

4-109 Court support staff.

1. Child welfare workers' duties shall include but not be limited to:
   A. Identifying and developing resources on the reservation designed to enhance each Tribal minor's potential as a viable member of the Tribal community;
   B. Make investigations as provided in this Code or as directed by the Court;
   C. Make reports to the Court as provided in this Code or as directed by the Court;
   D. Place a minor in detention or shelter care as provided in this Code;
   E. Perform such other duties in connection with the care, custody or transportation of minors as the Court may require.
2. Presenting officer's duties shall include, but not be limited to:
   A. Make investigations as provided in this Code or as directed by the Court;
   B. File petitions with the Court as provided in this Code;
   C. Represent the Tribe in all proceedings under this Code; and
   D. Perform such other duties as the Court may order. [TCR 86-79]

4-110 Notice of legal rights.

1. At his/her first appearance before the Court, the child and his/her parents, guardian or other legal custodian shall be fully advised by the Court of their legal rights, including:

A. Their right to a jury trial upon demand where available;
B. Their right to be represented by an attorney, at their own expense at every stage of the proceeding;
C. Their right to see, hear, and cross-examine all witnesses against them;
D. Their right to call witnesses on their own behalf and to have court process compel the attendance of witnesses for them;
E. In juvenile delinquency proceedings, the right of the child not to be compelled to testify against him/herself.

2. If the child or his/her parents, guardian, or other legal custodian requests an attorney and is found to be without sufficient financial means, counsel to the extent such are available at no fee, shall be appointed by the Court in proceedings wherein the Tribe is a party, and termination of the parent/child legal relationship is stated as a possible remedy in the summons.
3. The Court may appoint counsel without such request if it deems representation by counsel necessary to protect the interest of the child or other parties. [TCR 86-79]

4-111 Basic rights.

1. Custody. At the time a minor is taken into custody as a juvenile offender, the arresting officer shall give the following warnings:
   A. The minor has a right to remain silent;
   B. Anything the minor says can be used against the minor in Court;
   C. The minor has a right to the presence of an attorney during questioning; and
   D. If he/she cannot afford an attorney, the Court is not required to provide free legal service.
2. Detention and Shelter Care. A minor alleged to be a juvenile offender who is taken into custody and placed in detention or shelter care shall not be questioned except in the presence of his/her parent(s), guardian, custodian, or attorney except to determine identity.
3. Fingerprints and Photographs. An alleged juvenile offender shall not be fingerprinted or photographed without the consent of the Court.
4. Minors-in-Need-of-Care; Right to an Attorney. In minor-in-need-of-care proceedings, the parent(s), guardian, or custodian shall be informed of their right to an attorney.
5. Guardian ad Litem. The Court, at any stage of a proceeding may appoint a guardian ad litem for a minor who is a party, if the minor has no parent, guardian, or custodian appearing on behalf of the minor or if their interests conflict with those of the minor.
6. Hearings: Explanation of Rights at First Appearance. At his/her first appearance before the Court, the minor, who is alleged to be a juvenile offender; the parent(s), guardian or custodian, when a minor is alleged to be a minor-in-need-of-care; and the parent(s), in a termination of parental rights proceeding shall be informed by the Court of:
   A. The allegations against him/her;
   B. The right to an attorney at his/her own expense;
   C. The tight to testify or remain silent and that any statement made by him/her may be used against him/her;
   D. The right to cross-examine witnesses;
   E. The right to subpoena witnesses on his/her own behalf; and
   F. The possible consequences if the allegations of the petition are found to be true.

   [TCR 86-79]

4-112 Warrants and custody orders.

1. Juvenile offenders.

A. Custodial Warrant. The Court may issue a warrant directing that a minor be taken into custody if the Court finds probable cause to believe the minor has committed the acts alleged in the complaint.

B. Search Warrant:

i. The Court may issue a warrant authorizing a police officer to search for a minor if there is probable cause to believe that the minor is within the Court's jurisdiction and a custodial warrant has been issued for the alleged juvenile offender; or

ii. The Court may issue a warrant authorizing a police officer to search for and seize property when the property has been obtained or is possessed in a manner which constitutes a delinquent act; or is designed or intended for use or which is or has been used as a means of committing a delinquent act; or would be material evidence in a juvenile offender proceeding.

2. Minors-in-need-of-care.

A. Emergency Custody Order (Ex Parte Custody Order). The Court may issue an emergency custody order (ex parte custody order) upon a sworn written statement of facts, showing probable cause exists to believe that a minor is a minor-in-need-of-care; or

B. Search Warrant. The Court may issue a warrant authorizing a police officer to search for a minor if there is probable cause to believe that the minor is within the Court's jurisdiction and an emergency custody order has been issued for the alleged minor-in-need-of-care.

3. Bench Warrant. The Court may issue a warrant for a person's arrest for contempt of Court immediately upon the failure to appear in Court as directed, either in person or by counsel.

4. Retake (arrest) Warrant. The Court may issue a retake (arrest) warrant directing that a minor be taken into custody if the Court finds probable cause to believe the minor has violated the terms of his/her probation. [TCR 86-79]

4-113 Full faith and credit. The Court shall give fair faith and credit to state and other Tribe's child custody court orders, as defined by the Indian Child Welfare Act, 25 U.S.C. & 1911(d). [TCR 86-79]

4-114 Admissibility of evidence in other proceedings. No adjudication upon the status of any child in the jurisdiction of the Court shall be deemed criminal or a conviction of a crime, unless the Court refers the matter to the Tribal Court. Therefore the disposition of a child or of evidence given shall not be admissible as evidence against the child in any proceedings in another court. [TCR 86-79]

4-115 Expungement. When a minor, who has been the subject of any proceeding before the Court, attains his/her twenty-first birthday, the Chief Judge of the Tribal Court shall order the clerk of the Court to destroy both the Court records and the law enforcement records. [TCR 86-79]

4-116 Contempt of Court.

1. Definition. Any willful disobedience or interference with any order of the Court constitutes contempt of Court.
2. Punishment. The Court may punish an adult for contempt of Court in accordance with the Tribal Code. [TCR 86-79]

4-117 Medical examination. The Court may order a medical examination for a minor who is alleged to be a juvenile offender or minor-in-need-of-care. [TCR 86-79]

4-118 Fingerprints. If latent fingerprints are found during the investigation of an offense and a law enforcement officer has reasonable grounds to believe that the fingerprints are those of a minor in

custody, he/she may fingerprint the minor for the purpose of immediate comparison with the latent fingerprints only with the consent of the Court. Copies of the fingerprints shall be immediately destroyed if the comparison is negative or if the minor is not referred to the Court. [TCR 86-79]

4-119 Rules of procedure. The Court will follow the rules of procedure adopted for the Juvenile Court. [TCR 86-79]

4-120 Expenditure of funds. The Chief Judge is authorized to receive and expend any funds which may become available from the federal or state governments or any subdivisions thereof to carry out any of the purposes of this Code; and to this end, the judge may meet any lawful federal or state requirements not in conflict with this Code or contrary to the jurisdictional rights and sovereign status of the Winnebago Tribal Court which may be conditions precedent to receiving such funds. [TCR 86-79]

4-121 Procedure.

1. The Rules of Juvenile Procedure herein set forth shall apply in all proceedings under this Title. To the extent that any procedure is not specifically set forth herein, the general rules of civil procedure shall apply.
2. In cases involving an allegation of delinquency by means of commission of an offense, the adjudicatory hearing shall be held in conformity with the rules of criminal procedure, and the child shall be entitled to all rights, privileges, and immunities of an accused in a criminal case.
3. The Tribal Court shall have the authority by written Court rule not inconsistent with this Act or the Rules of Civil Procedure and filed of record in the Court clerk's office and tribal secretary's office to provide for any procedure or form necessary for the efficient, orderly and just resolution of cases under this Title. [TCR 86-79]

4-122 Prosecution; criminal charge or Juvenile Court petition; determination; considerations. In cases where a child may be charged, when the juvenile is under the age of sixteen years, the prosecutor shall, in making the determination whether to file a criminal charge or Juvenile Court petition, consider:

1. The type of treatment such juvenile would most likely be amenable to;
2. Whether there is evidence that the alleged offense included violence or was committed in an aggressive and premeditated manner;
3. The motivation for the commission of the offense;
4. The age of the juvenile and the ages and circumstances of any others involved in the offense;
5. The previous history of the juvenile, including whether he/she had been convicted of any previous offenses or adjudicated in Juvenile Court, and, if so, whether such offenses were crimes against the person or relating to property, and other previous history of antisocial behavior, if any, including any patterns of physical violence;
6. The sophistication and maturity of the juvenile as determined by consideration of his/her home, school activities, emotional attitude and desire to be treated as an adult, pattern of living, and whether he/she has had previous contact with law enforcement agencies and courts and the nature thereof;
7. Whether there are facilities particularly available to the Juvenile Court for treatment or rehabilitations of the juvenile;
8. Whether the best interests of the juvenile and the security of the public may require that the juvenile continue in custody or under supervision for a period extending beyond his/her minority and, if so, the available alternatives best suited to this purpose; and
9. Such other matters as the prosecutor deems relevant to his/her decision. [TCR 86-79]

4-123 Juvenile charged in court other than Juvenile Court; transfer to Juvenile Court; procedure. Before the plea is entered, or in case an offense is charged, at any time prior to or at the preliminary hearing, the Court shall advise any person who was juvenile at the time of the commission of the alleged act charged in any court other than a Juvenile Court, that such juvenile may orally or in writing move the Court in which the charge is pending to waive jurisdiction to the Juvenile Court for further proceedings. If an offense is charged, such motion shall be filed in the Tribal Court and the hearings shall be held before a commencement of trial or acceptance of a plea of guilty or no contest by the Court. The Court shall schedule a hearing on the motion within fifteen days. The customary rules of evidence shall not be followed at such hearing. The prosecutor shall present the evidence and reasons why the case should be retained, and the defendant shall present evidence and reasons why the case should be transferred. The Court shall give due consideration to the criteria set forth in Section 4-122. In deciding the motion, the Court shall, after considering the evidence and the reasons presented by the parties and the matters required to be considered by the prosecutor, transfer the case unless a sound basis exists for retaining jurisdiction. Nothing in this Section shall prohibit the prosecutor from waiving any objection to such a transfer even when a complaint is filed. In such cases it shall be sufficient for the Court to sustain the motion of the juvenile without entering a finding. The Court shall set forth findings for the reason for its decision, which shall not be a final order for the purpose of enabling an appeal. If the Court determines that the juvenile should be transferred to the Juvenile Court, the complaint may be filed in place of a Petition therein. The Court making such transfer shall order the juvenile to be taken forthwith to the Juvenile Court and designate where the juvenile shall be kept pending determination of the Juvenile Court. Nothing in this Section shall be construed to require more than one transfer proceeding. [TCR 86-79]

4-124 Pre-transfer report. Prior to the transfer hearing, a study and a report in writing shall be submitted to the Winnebago Juvenile Court by child and family services. Such report shall be relevant to those factors included in Section 4-122.

1. In any criminal case in which the offense charged is designed to protect children, and the Tribal Court certifies the case to the Juvenile Court for disposition, the trial of the adult in the Juvenile Court shall be handled according to the Tribal rules of criminal procedure, and the Court may sentence the convicted adult in any manner available to the Tribal Court. Certification of such cases shall occur only when it is made to appear to the Tribal Court that some interest of the Juvenile Court in a matter pending before it will be served thereby.
2. In any case in which a child has come within the jurisdiction of the Juvenile Court, that court shall have authority to exercise jurisdiction over adults to the extent necessary or reasonably believed to be necessary to make a proper disposition of each case, including authority to punish for contempt committed either in or out of the Court's presence. [TCR 86-79]

4-125 Orders for support.

1. Whenever a child is removed from the custody of its parent, guardian, or other custodian, the parent or other person shall be ordered by the Court to contribute a reasonable amount within their means, or to do labor for the Tribe, or take other reasonable action to provide support for the child.
2. In cases of necessity, the Court may order a traditional custodian to assist in providing the necessities of life within that custodian's means after a hearing, whether the child has been placed in his/her own home or elsewhere.
3. When the Tribe, or some other agency is paying for foster care for such child, the contribution of the parent shall be paid to the Court clerk and dispensed by Court order to that agency or the Tribe as may be necessary by law or appropriate in the circumstances. In any cases of placement

with a particular family, the contribution shall be paid to that family by the Court clerk subject to the supervision of the Court to prevent waste or misuse of such funds. [TCR 86-79]

4-126 Prosecutor's duties. The tribal prosecutor shall represent the Tribe in the interest of the child in all proceedings subject to this Act in which the Tribe is a party. In proceedings subject to this Act in which the Tribe is not a party, the Tribal prosecutor, upon request of the Court, shall intervene on behalf of the Tribe in the interest of the child and, thereafter, shall act as the guardian of the child. [TCR 86-79]

4-127 Inspection of court records. The following inspection rules shall apply to court records under this Title unless such inspection rights would compromise the safety and well-being of the child, parents, and family.

1. Records of court proceedings shall be open to inspection by the parents or guardian, attorneys and other parties in proceedings before the Court, and to any agency to which legal custody of the child has been transferred, except records of court proceedings in formal adoption and formal relinquishment shall be confidential and open to inspection only by Court order.
2. With consent of the Court, records of court proceedings may be inspected by the child, by persons having a legitimate interest in the proceedings, and by persons conducting pertinent research studies, except in formal relinquishment and formal adoption proceedings.
3. Probation counselor's records and all other reports of social and clinical studies shall not be open to inspection, except by consent of the Court. [TCR 86-79, 15-127]

4-128 Law enforcement records.

1. The records of law enforcement officers concerning all children's cases or children taken into temporary custody or issued a summons under the provisions of this Title shall be maintained separately from the records of arrest and may not be inspected by or disclosed to the public, including the names of children taken into temporary custody or issued a summons, except:
   A. To the victim in each case when the child is found guilty of a delinquent act;
   B. When the child has escaped from an institution to which he/she has been committed;
   C. By order of the Court;
   D. When the Court orders the child to be held for criminal proceedings; or
   E. When there has been a criminal conviction and a pre-sentence investigation is being made on an application for probation; or
   F. When the disclosure is to a Tribal, federal, or state officer, employee, or agency in their official capacity who shows a bona fide need for the information requested to assist in apprehension, to conduct a current investigation, or as otherwise provided by Tribal law. [TCR 86-79]

4-129 Child and family services. The records of child and family services concerning all children's cases under the provisions of this Title may not be inspected or disclosed to the public, including the names of children taken into custody or issued a summons, except:

1. To the victim in each case when the child is found guilty of a delinquent act;
2. When the child has escaped from an institution to which he/she has been committed;
3. By order of the Court;
4. When the Court orders the child to be held for criminal proceedings;
5. When there has been a criminal conviction and a pre-sentence investigation is being made on an application for probation;

6. When the disclosure is to a Tribal, federal, or state officer, employee, or agency in their official capacity who shows a bona fide need for the information requested to assist in apprehension, to conduct a current investigation, or as otherwise provided by Tribal law. [TCR 86-79]

4-130 Identity confidential. No fingerprint, photograph, name, address, or other information concerning the identity of a child taken into temporary custody or issued a summons under the provisions of this Article may be transmitted to the Federal Bureau of Investigation or any other person or agency except a local law enforcement agency when necessary to assist in apprehension or to conduct a current investigation, or when the Court orders the child to be held for criminal proceedings. [TCR 86-79]

4-131 Exclusion of certain statement by alleged delinquent.

1. No statements or admissions of a child made as a result of interrogation of the child by a law enforcement official concerning acts alleged to have been committed by the child which would constitute a crime if committed by an adult shall be admissible in evidence against that child unless a parent, guardian, or legal custodian of the child was present at such interrogation and the child and his/her parent, guardian, or legal custodian were advised of the child's rights to remain silent, that any statements made may be used against him/her in a court of law, the right of the presence of an attorney during such interrogation, and the right to have counsel appointed if so requested at the time of the interrogation if available at no fee except that, if, to the extent such counsel is available at no fee, legal counsel representing the child is present at such interrogation, such statements or admissions may be admissible in evidence even though the child's parent, guardian, or legal custodian was not present.
2. Notwithstanding the provisions of subsection (1) of this Section, statements or admissions of a child shall not be inadmissible in evidence by reason of the absence of a parent, guardian, or legal custodian if the child is emancipated from the parent, guardian, or legal custodian or if the child is a runaway from outside the Court's jurisdiction and is of sufficient age and understanding. [TCR 86-79]

4-132 Voluntary foster care authorized. In order to provide better treatment for a family's problems and to better protect children, the department is authorized to accept a child for foster care when:

1. The parent, guardian, or other physical or legal custodian has consented to such foster care in writing before a judge of a court of competent jurisdiction by the judge's certificate that the terms and conditions, and consequences of such consent were fully explained in detail and fully understood in English, or that it was interpreted into a language that was understood.
2. A consent to foster care placement may be withdrawn by the person giving same, the parent or other legal guardian having legal custody, or a traditional custodian at any time and the child shall be returned to the authorized person requesting the child's release within forty-eight hours. [TCR 86-79]

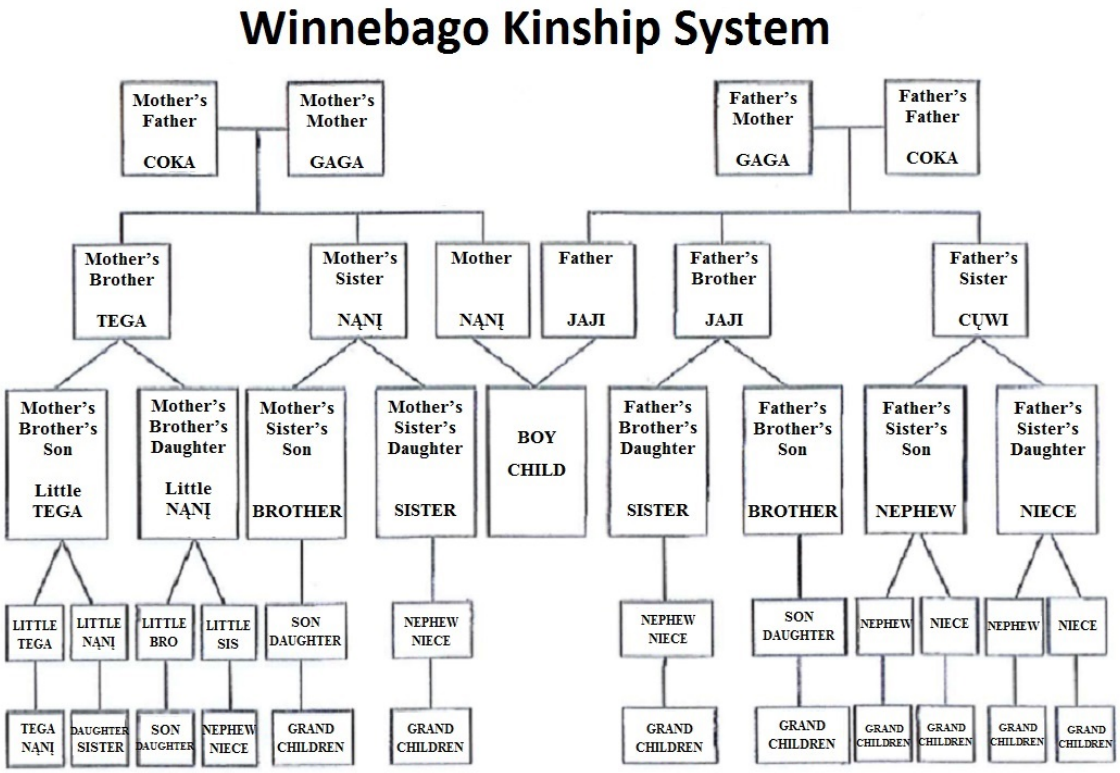
4-133 Required Findings by a Court for Removal. An order removing a child from the home under this Title, including orders for temporary or emergency removal, shall only be entered upon the Court making the following determinations:

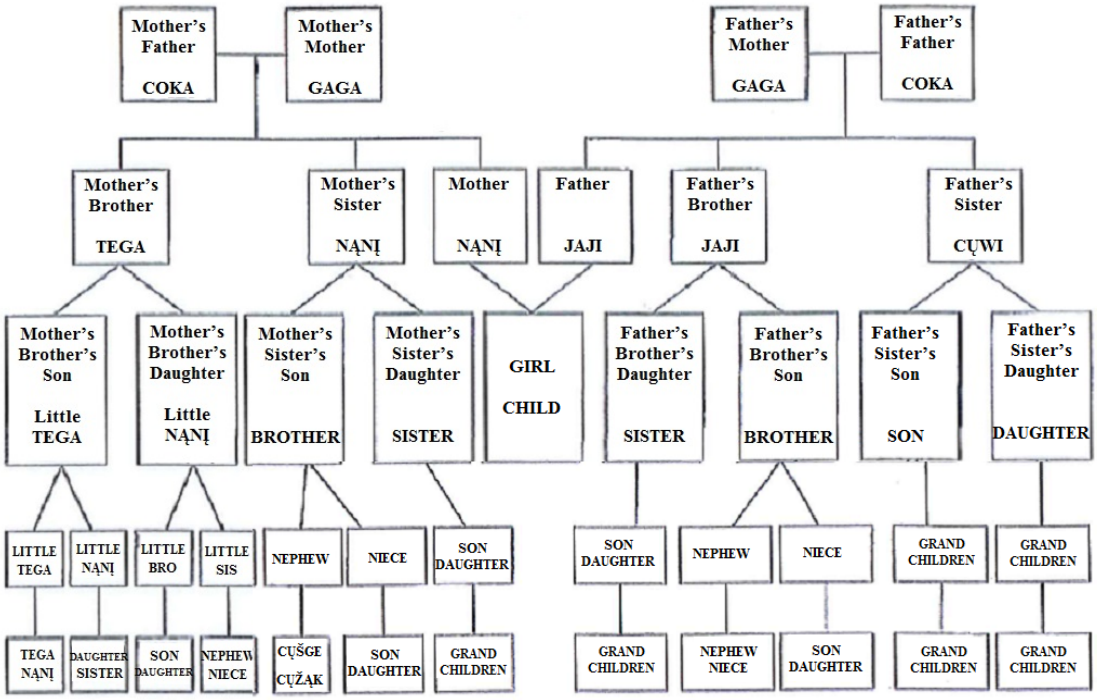
i. That an imminent safety threat exists and continuation in the home of the minor is contrary to the welfare of the minor; and either
ii. Reasonable efforts have been made to prevent removal of the minor from the minor's home; or
iii. Reasonable efforts are not required for a reason set forth in Section 4-134(4). [TCR 15-127]

4-134 Reasonable Efforts.

1. The Department shall make reasonable efforts to do the following:
   A. maintain the family unit and prevent the unnecessary removal of a child from his or her home, as long as the child's safety is assured;
   B. effect the safe reunification of the child and family if temporary out-of-home placement is necessary to ensure the immediate safety of the child; and
   C. make and finalize alternate permanency plans in a timely manner when reunification is not appropriate or possible.
2. In determining reasonable efforts, the child's health and safety is the paramount concern.
3. If continuation of reasonable efforts is determined to be inconsistent with the permanency plan for the child, reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan including, if appropriate, through an interstate placement, and to complete whatever steps are necessary to finalize the permanent placement of the child.
4. Reasonable efforts to prevent a child's removal from his home or reunify the child with his family are not required if the Court makes a judicial determination that such efforts are not required for any of the following reasons:
   A. A court of competent jurisdiction has determined that the child's parent, guardian, or legal custodian has subjected the child to abandonment, torture, chronic abuse, sexual abuse, or circumstances making it necessary for an Emergency Custody Order.
   B. A court of competent jurisdiction has determined that the child's parent, guardian, or legal custodian has:
      i. committed murder of another child of that parent;
      ii. committed voluntary manslaughter of another child of that parent;
      iii. aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter; or
      iv. committed a felony assault that results in serious bodily injury to the child or to another child of the parent.
   C. The parental rights of the parent to a sibling of the child have been terminated involuntarily. [15-127]

4-135 Winnebago Kinship System.





[TCR 15-127]

TITLE 4
ARTICLE 2
EMERGENCY CUSTODY

4-201 Taking a minor into custody.
4-202 Notification of parents.
4-203 Notification of Court officers.
4-204 Release of detained child.
4-205 Special release rule for major offenses.
4-206 Court ordered release.
4-207 Extension of detention period.
4-208 Detention and shelter.
4-209 Emergency shelter in child's home.
4-210 Court ordered medical treatment.
4-211 Court ordered commitment for observation.
4-212 Search warrants for the protection of children.
4-213 Preliminary inquiry: criteria for detention or shelter care.
4-214 Place of detention or shelter care.
4-215 Standards for shelter care and detention facilities.

4-201 Taking a minor into custody.

1. A child may be taken into temporary custody by a law enforcement officer without order of the Court when there are reasonable grounds to believe that:
   A. He/she has committed an act which would be a major crime, misdemeanor, or Tribal ordinance violation if committed by an adult; except that wildlife, parks, outdoor recreation, and traffic violations shall be handled as otherwise provided by laws pursuant to the law of arrest;
   B. He/she is abandoned, lost or seriously endangered in his/her surroundings or seriously endangers others and immediate removal appears to be necessary for his/her protection or the protection of others; or
   C. He/she has run away or escaped from his/her parents, guardian, or legal custodian; or
   D. He/she has violated the conditions of probation and he/she is under the continuing jurisdiction of the Juvenile Court.
2. A child may be detained temporarily without an order of the Court by an adult other than a law enforcement officer if the child has committed or is committing an act in the presence of such adult which would be a violation of any federal or Tribal law, other than a violation of traffic and game and fish laws or regulations, if committed by an adult. Any person detaining a child shall notify, without unnecessary delay, a law enforcement officer, who shall assume custody of said child.
3. A medical doctor, physician, or similar licensed practitioner of medicine may temporarily detain without an order of the Court a child brought before him/her for treatment whom he/she reasonably suspects to be the victim of child abuse. Any person detaining a child due to possible child abuse shall notify, without unnecessary delay, a law enforcement officer who shall assume custody of the child. The law enforcement officer assuming custody shall have the authority to consent to the admission of the child to a medical facility and to consent to emergency medical treatment necessary to protect the life or health of the child from danger of imminent harm. The opinion of two or more licensed medical doctors that treatment for a condition could not reasonably be delayed for a period long enough to contact a judge for an emergency medical treatment order shall create a presumption that the law enforcement officer properly gave his/her consent to treatment of the child.
4. A juvenile probation officer may take a child into temporary custody under any of the circumstances stated in subsection (1)(A) or (1)(D).
5. In all other cases, a child may be taken into custody only upon an order of the Court.
6. The taking of a child into temporary custody under this Section is not an arrest nor does it constitute a police record. [TCR 86-79, 15-127]

4-202 Notification of parents. When a child is taken into temporary custody, the officer shall notify a parent, guardian, or legal custodian without unnecessary delay and inform him/her that, if the child is placed in detention, all parties have a right to a prompt hearing to determine whether the child is to be detained further. Such notification may be made to a person with whom the child is residing if a parent, guardian, or legal custodian cannot be located. If the officer taking the child into custody is unable to make such notification, it may be made by any other law enforcement officer, probation counselor, detention center counselor, or jailer in whose physical custody the child is placed. [TCR 86-79]

4-203 Notification of Court officers. Whenever an officer or other person takes a child to a detention or shelter facility, or admits a child to a medical facility pursuant to this Article and determines not to release said child pursuant to this Article, the officer or other person who took the child to a detention or shelter facility shall notify the Tribal prosecutor, the department and any agency or persons so designated by the Court at the earliest opportunity that the child has been taken into custody and where he/she has been taken. He/she shall also promptly file a brief written report with the Tribal prosecutor, the department, and any agency or person so designated by the Court stating the facts which led to the child being taken into custody and the reason why the child was not released. This report shall be filed within twenty-four (24) hours excluding Saturdays, Sundays, and legal holidays. [TCR 86-79]

4-204 Release of detained child.

1. Except as provided in subsection (2) of this Section, a child shall not be detained by law enforcement officials any longer than is reasonably necessary to obtain his/her name, age, residence and other necessary information and to contact his/her parents, guardian, or legal custodian. The child shall be given the warnings listed at Section 4-110 to any minor taken into custody.
2. The child shall be released to the care of his/her parents or other responsible adult, unless his/her immediate welfare or the protection of the community requires that he/she be detained. The parent or other person to whom the child is released may be required to sign a written promise, on forms supplied by the Court, to bring the child to the Court at a time set or to be set by the Court.
3. If he/she is not released as provided in subsection (2) of this Section, he/she shall be taken directly to the Court or to the place of detention or shelter approved by the department and designated by the Court without unnecessary delay unless admitted to a facility for medical treatment pursuant to Section 4-201(3) of this Title.
4. No child shall be detained pursuant to subsection (2) for a period exceeding seventy-two hours exclusive of Saturdays, Sundays, and legal holidays without an order of the Court. If no Court order is issued within such time, the child must be released.
5. Notwithstanding the provisions of subsection (4) of this Section, a child who is alleged to be a runaway from another Tribal jurisdiction or a state may be held in a detention facility or jail up to seven days, during which time arrangements shall be made for returning the child to his/her parent or legal custodian. [TCR 86-79]

4-205 Special release rule for major offenses.

1. No child taken to a detention or shelter facility without a Court order as the result of an allegedly delinquent act which would constitute major crime if committed by an adult shall be released from such facility unless, in writing, a law enforcement agency has requested that a detention hearing be held to determine whether the child's immediate welfare or the protection of the community requires that he/she be detained. No such child shall thereafter be released from detention except for a hearing, reasonable advanced notice of which has been given to the Tribal prosecutor alleging new circumstances concerning the further detention of the child.

2. When, following a detention hearing as provided for by subsection (1) of this Section, the Court orders further detention of a child, a petition alleging the child to be delinquent shall be filed with the Court without unnecessary delay if one has not been previously filed, and the child shall be held in detention pending a hearing on the petition.
3. Nothing herein shall be construed as depriving a child of the right to bail under the same circumstances as an adult. [TCR 86- 79]

4-206 Court ordered release. At any time prior to the filing of a petition and entry of an emergency custody order on that petition, the Court may order the release of any child from detention or shelter care without holding a hearing, either without restriction or upon written promise of the parent, guardian, or legal custodian to bring the child to the Court at a time set or to be set by the Court. [TCR 86-79]

4-207 Extension of detention period. For good cause shown, the Court may extend the time period during which a child may be detained without a petition and Court order for a period not exceeding five working days. Such extension shall be in writing or may be made verbally and reduced to writing within twenty-four hours. [TCR 86-79]

4-208 Detention and shelter.

1. A child who must be taken from his/her home but who does not require physical restriction shall be given temporary care in a shelter facility approved by the department and designated by the Court or the Tribal or Bureau of Indian Affairs Department of Social Services and shall not be placed in detention.
2. No child under the age of fourteen and, except upon the order of the Court, no child fourteen years of age or older and under sixteen years of age shall be detained in a jail, lockup, or other place used for confinement of adult offenders or persons charged with crime. The exception shall be used by the Court only if no other suitable place of confinement is available.
3. A child fourteen years of age or older shall be detained separately from adult offenders or persons charged with crime, including any child ordered by the Court to be held for criminal proceedings.
4. The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the Court and Tribal prosecutor immediately when a child who is or appears to be under the age of nineteen is received at the facility, except for a child ordered by the Court to be held for criminal proceedings. [TCR 86-79]

4-209 Emergency shelter in child's home.

1. Upon application of the Bureau of Indian Affairs Social Services Department, or of the Department, the Court may find that it is not necessary to remove a child from his/her home to a temporary shelter facility and may provide temporary shelter in the child's home by authorizing a representative of the Bureau of Indian Affairs Department of Social Services or the department, which has emergency caretaker services available, to remain in the child's home with the child until a parent, or legal guardian, or relative of the child enters the home and expresses willingness and has the apparent ability, as determined by the Bureau of Indian Affairs Department of Social Services, or the department, to resume charge of the child, but in no event shall such period of time exceed seventy-two hours. In the case of a relative, the relative is to assume charge of the child until a parent or legal guardian enters the home and expresses willingness and has the apparent ability, as determined by the Bureau of Indian Affairs Department of Social Services or the department, to resume charge of the child.
2. The director of the Bureau of Indian Affairs Department of Social Services, or the department shall designate in writing the representatives of these departments authorized to perform such duties.

3. The Court order allowing emergency shelter in the child's home may be written or oral provided that if consent is given verbally, the judge shall reduce the consent given to writing within twenty-four hours. [TCR 86-79]

4-210 Court ordered medical treatment.

1. At any time after a child is taken into custody with or without a Court order and prior to adjudication on the merits:
   A. When the Court finds that emergency medical surgical, or dental treatment is required for a child in Tribal custody, it may authorize such treatment or care if the parents, guardian, or legal custodian are not immediately available to give their consent or to show cause why such treatment should not be ordered. The power to consent to emergency medical care may be delegated by the Court to the agency or person having physical custody of the child pursuant to this Title or pursuant to Court order.
   B. After making a reasonable effort to obtain the consent of the parent, guardian, or other legal custodian, and after a hearing on notice, the Court may authorize or consent to non-emergency medical, surgical, or dental treatment or care for a child in Tribal custody.
2. After a child has been adjudicated a ward of the Court, the Court may consent to any necessary emergency, preventive or general medical surgical or dental treatment or care, or may delegate the authority to consent thereto to the agency or person having custody of the child. [TCR 86-79]

4-211 Court ordered commitment for observation. If it appears that any child being held in detention or shelter may be mentally ill, developmentally disabled, or has sustained any trauma which may result in a delayed medical danger or injury, the Court shall place the child in a designated facility approved by the Court for seventy-two hour treatment and evaluation. Upon the advice of a physician, the treatment and evaluation period may be extended for a period not exceeding ten days. [TCR 86-79]

4-212 Search warrants for the protection of children.

1. A search warrant may be issued by the Juvenile Court to search any place for the recovery of any child within the jurisdiction of the Court believed to be a child in need of supervision, or a neglected or dependent child or a child-in-need-of-care.
2. Such warrant shall be issued only on the conditions that the application for the warrant shall:
   A. Be in writing and supported by affidavit sworn to or affirmed before the Court;
   B. Name or describe with particularity the child sought;
   C. State that the child is believed to be a child in need of supervision, or a neglected or dependent child and the reasons upon which such belief is based;
   D. State the address or legal description of the place to be searched;
   E. State the reasons why it is necessary to proceed pursuant to this Section instead of proceeding by petition or summons.
3. If the Court is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, it shall issue a search warrant identifying by name or describing with particularity the child sought and the place to be searched.
4. The search warrant shall be directed to any officer authorized by law to execute it wherein the place to be searched is located.
5. The warrant shall state the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof.
6. The warrant shall be served in the daytime unless the application for the warrant alleges that it is necessary to conduct the search at some time, in which case the Court may so direct.
7. A copy of the warrant, the application therefore, and the supporting affidavit shall be served upon the person in possession of the place to be searched and where the child is to be sought.

8. If the child is found, the child may be taken into custody in conformance with the provisions of Section 4-201.
9. The warrant shall be returned to the issuing court. [TCR 86-79]

4-213 Preliminary inquiry: criteria for detention or shelter care. If a minor is placed in detention or shelter care pursuant to Section 4-201, the Court shall conduct a preliminary inquiry within forty-eight hours for the purpose of determining if criteria for detention or shelter care exists.

1. Criteria for detention or shelter care for a juvenile offender exists if the Court finds:
   A. Probable cause exists to believe the minor committed the alleged delinquent act; and
   B. The act is serious enough to warrant continued detention or shelter care;
   C. There is reasonable cause to believe the minor will run away so that he/she will be unavailable for further proceedings; or
   D. There is reasonable cause to believe that the minor will commit a serious act causing damage to person or property.
2. Criteria for shelter care for neglected or dependent or minor-in-need-of-care exists if the Court finds:
   A. Probable cause exists to believe the minor is a minor-in-need-of-care or neglected and;
   B. The minor is suffering from an illness or injury and no parent, guardian, custodian, or other person is providing adequate care of him/her;
   C. The minor is in immediate danger from his/her surroundings, and removal is necessary for his/her safety or well-being;
   D. The minor will be subject to injury by others if not placed in the custody of the Court;
   E. The minor will be subject to injury by him/herself if not placed in the custody of the court;
   F. No parent, guardian, custodian or other person is able or willing to provide adequate supervision and care for the minor; or
   G. The minor will run away so that he/she will be unavailable for further proceedings. [TCR 86-79]

4-214 Place of detention or shelter care.

1. A minor alleged to be a juvenile offender may be detained, pending a Court hearing, in the following places:
   A. A foster care facility licensed or approved by the Tribe;
   B. A detention home approved by the Tribe; or
   C. A private family home approved by the Tribe.
2. A minor alleged to be a minor-in-need-of-care may be detained, pending a Court hearing, in the following places:
   A. A foster care facility licensed or approved by the Tribe;
   B. A private family name approved by the Tribe; or
   C. A shelter care facility approved by the Tribe.
3. An alleged juvenile offender who is sixteen years of age or older may be detained in a jail or facility used for the detention of adults only if:
   A. A facility in subsection (1) of this Section is not available or would not assure adequate supervision of the minor;
   B. Detention is in a cell separate but not removed from sight and sound of adults whenever possible; and
   C. Adequate supervision is provided twenty-four hours a day. [TCR 86-79]

4-215 Standards for shelter care and detention facilities.

1. The Chief Judge of the Tribal Court shall adopt written rules and regulations governing the operation of detention and shelter care facilities. The Chief Judge of the Tribal Court may assign the responsibility to another qualified tribal agency.
2. The rules and regulations shall include but are not limited to the following:
   A. Cleanliness standards;
   B. Heat, water, and light standards;
   C. Personnel standards;
   D. Visiting privileges;
   E. Occupancy standards;
   F. Provisions for medical and dental care; and
   G. Provisions for food, clothing and other personal items.
3. The Chief Judge of the Tribal Court shall prescribe and enforce policies and procedures governing the administration of detention and shelter care facilities.
4. Such policies and procedures shall include but are not limited to the following:
   A. A minor shall not be punished, ridiculed, or criticized for expressing through speech, custom or dress the minor's Indian or Tribal heritage;
   B. A minor shall be allowed to wear his/her hair according to his/her personal taste. The minor shall not be punished, ridiculed, or criticized for the hairstyle he/she selects;
   C. A minor may wear his/her own clothes rather than clothes supplied by the detention facility so long as they comply with minimum standards of cleanliness;
   D. Incoming and outgoing mail may be inspected for contraband, but shall not be read;
   E. Whenever possible, the minor shall be allowed to attend the school in which he/she is enrolled. School work and educational assistance at the minor's level of development shall be provided for the minor in detention facilities;
   F. A minor shall be allowed to attend traditional ceremonials provided that he/she is accompanied by a parent, guardian, or custodian; has received consent to do so by the Juvenile Court judge; and returns immediately to the detention or shelter care facility;
   G. A minor shall be allowed to attend the funeral and any related activities of his/her extended family, whether they be natural or adopted, provided that:
      i. He/she has received consent to do so by the Juvenile Court judge;
      ii. He/she is accompanied by a parent, guardian, or custodian; and
      iii. His/her parent, guardian, or custodian agree to return the child;
   H. A minor shall be given the opportunity to engage in physical exercise every day;
   I. A minor shall not be locked alone in a room unless there exists a reasonable belief that he/she may cause physical injury to him/herself or others if not locked alone. While the minor is locked alone in a room, he/she must be visited at least once every thirty minutes. The confinement shall not continue unnecessarily;
   J. A minor shall not be punished by physical force, solitary confinement, or deprivation of meals or family visits;
   K. A minor shall not be required to perform unreasonable work duties not commensurate with his/her age, physical or mental abilities; and
   L. A minor shall be required to perform reasonable work duties such as maintenance of his/her bunk and personal property. [TCR 86-79]

TITLE 4
ARTICLE 3
ADJUDICATION

4-301 Court intake.
4-302 Prosecutor's (presenting officer's) intake.
4-303 Diversion by contract.
4-304 Diversion contract inadmissible.
4-305 Diversion by consent decree.
4-306 Limitations on diversions.
4-307 Guardian ad litem appointments.
4-308 Guardian ad litem duties.
4-309 Adjudicatory hearing.
4-310 Mentally ill and developmentally disabled children.
4-311 Consent decree.
4-312 Dismissal of petition.
4-313 Sustaining petition
4-314 Temporary orders.

4-301 Court intake.

1. Whenever it appears to a law enforcement officer or any other person that a child is or appears to be within the Court's jurisdiction, by reason of delinquency, need of supervision, neglect, or deprivation, or in need of care, the law enforcement officer or other person may refer the matter conferring or appearing to confer jurisdiction to the Tribal juvenile probation officer or the department worker, who shall determine whether the interest of the child or of the community require that further action be taken.
2. If the department worker determines that the interests of the child or of the community require that Court action be taken, he/she shall request in writing the Tribal prosecuting or presenting officer to file a petition and deliver a copy of the entire case file to the prosecuting or presenting officer.
3. If the prosecutor or presenting officer is unable to determine from information available to him/her whether the interests of the child or of the Tribe require that Court action be taken, he/she may refer the matter to the department or Bureau of Indian Affairs Department of Social Services or a Tribal or Bureau of Indian Affairs law enforcement agency or other agency designated by the Court for a preliminary investigation and recommendations as to filing a petition or as to initiating an informal adjustment pursuant to this Title.
4. If the department worker determines that the interest of the child or of the Tribe do not require Court action, the department may offer such social services and make such referrals to other agencies as may be feasible to help the family with any problems they may have. [TCR 86-79]

4-302 Prosecutor's (presenting officer's) intake.

1. Upon receiving a request to file a petition and the accompanying reports and files from the department worker, the prosecutor (presenting officer) shall review the case file, reports, and any witness statements to determine if there is sufficient evidence which will be admissible under the Winnebago Rules of Evidence to establish the jurisdiction of the Tribal Juvenile Court over the child.
2. If the prosecutor (presenting officer) determines that there is not sufficient evidence available to establish the jurisdiction of the Tribal Juvenile Court over the child, he/she shall, in writing, refuse to file the requested petition, or, in his/her discretion, may request the department or the Bureau of Indian Affairs Social Services Department or law enforcement agency to conduct a further investigation into the matter.
3. If the prosecutor (presenting officer) determines that sufficient evidence is available to establish the jurisdiction of the Tribal Juvenile Court over the child, he/she shall file a petition concerning the child. [TCR 86-79]

4-303 Diversion by contract.

1. Prior to the filing of a petition, either the department worker or the prosecutor (presenting officer) with the consent of the department worker may divert any children's case, except a case subject to Section 4-205 or Section 4-306 of this Title from the Court process.
2. Diversion shall be made by entering into a contract with the child's parents, guardian, or other custodian whereby the parent, guardian or other custodian agrees to undergo specified treatment for the condition noticed, including an agreement to do or refrain from doing certain acts and the Child and Family Services worker or prosecutor (presenting officer) on behalf of the Tribe agrees not to file a petition in the case so long as the parent, guardian, or other custodian comply with the contract. The contract shall contain:
   A. The specific facts or allegation, including dates, which gave rise to the condition addressed by the contract.
   B. The specific treatment program(s) the parent(s), guardian, or custodian agree to successfully complete and their duration.
   C. The specific facts which the parent(s), guardian, or custodian agree to do or to refrain from doing.
   D. The specific treatment or other social services to be offered by the Tribe or the Bureau of Indian Affairs or such other agency whose services may be used and accepted by the family.
   E. A fixed, limited time for the contract to run, not exceeding one year.
   F. That the Tribe will not file a petition on the subject of the contract for the facts or allegations stated if the parents, guardian, or custodian comply with the contract terms for the full term in the contract.
   G. That each party has received a copy of the contract.
3. No diversion contract may place physical custody in any person or agency other than the parents, guardian, or other legal custodian unless it bears the approval in writing of a judge of the Juvenile Court. [TCR 86-79]

4-304 Diversion contract inadmissible. The diversion contract and any statements or admissions of the parties made in negotiating or fulfilling the terms of the contract are inadmissible as evidence except, that the parents, guardian, or custodian may prove the contract and show their compliance with the terms thereof as a defense to a petition filed concerning the matter of the contract. Upon a showing of compliance with the terms of the contract, the Court shall dismiss the petition unless it determines by evidence beyond a reasonable doubt that the child is in imminent danger of severe physical or mental harm. Proof of the contract shall not be an admission of the parents, guardian, or custodian of any of the facts alleged therein. [TCR 86-79]

4-305 Diversion by consent decree.

1. After filing of a petition, the prosecutor (presenting officer) with the consent of the department worker may divert any children's case, except a case subject to Section 4-205 or Section 4-306 of this Title from the adjudicatory process with the consent of the respondents and the Court by obtaining a consent decree if:
   A. The Court has informed the child and his/her parents, guardian, or legal custodian of their rights to:
      i. Deny the allegations of the petition and require the Tribe to prove each allegation by admissible evidence;
      ii. Confront and cross-examine the witnesses against them and to call witnesses on their own behalf;
      iii. Refuse to testify against themselves or each other in delinquency cases;

iv. A trial by jury of six (6) persons at the adjudicatory stage, where a jury trial is available;

v. Be represented by counsel at their own expense at each stage of the proceedings, and, to the extent counsel is available at no fee, to have counsel appointed for them if they cannot afford private counsel; and

vi. The Court believed they understood their rights.

B. Written consent to the decree is obtained from the parents, guardian, or legal custodian and the child if of sufficient age and understanding. The consent given for a consent decree does not constitute an admission for purposes of adjudication.

C. The department or the Bureau of Indian Affairs Social Services Department has prepared a treatment plan for the family to be incorporated into the consent decree which distinctly states:

i. The specific treatment programs the parents, guardian, or custodian, or child agree to successfully complete and their duration;

ii. The specific treatment or other social services to be offered by the Tribe or Bureau of Indian Affairs or other agency and accepted by the family;

iii. The specific acts which the parents, guardian, or custodian or child agree to do or to refrain from doing;

iv. The person or agency to be vested with custody of the child if the child cannot remain in his/her own home, the specific provisions of (i), (ii), (iii) above which must be completed or accomplished for a specific duration before the child is returned to his/her own home, and the period of supervision of the child in his/her own home.

2. After all parties have consented, the Court shall review the treatment plan, and if the Court agrees that the plan is satisfactory, shall order all parties to the consent decree to abide by the provisions of the treatment plan. The consent decree shall be monitored and modified as in other dispositions, provided that if the family fails to comply with the treatment plan, the Court, on motion of the prosecutor (presenting officer) shall proceed with adjudication.

3. A consent decree shall remain in effect for not exceeding one year, provided, that upon decree for an additional term of one year with the notice of hearing, the Court may extend the force of the decree and consent of the parties. The adjudication shall be continued during the term of the consent decree thereafter dismissed if the decree is complied with. [TCR 86-79]

4-306 Limitations on diversions. No child shall be handled by informal adjustment where the child referred to the Court by any person has had any sustained petition for delinquency in the preceding twelve months or has been handled by informal adjustment for a delinquent act in the preceding twelve months. [TCR 86-79]

4-307 Guardian ad litem appointments.

1. In all neglect, dependency and child-in-need-of-care cases in which the child has been in foster care for one year or longer or termination of parental rights is imminent, a guardian ad litem shall be appointed to represent that child's best interest.

2. The Court may appoint a guardian ad litem to protect the interest of a child when:

A. No parent, guardian, legal custodian, or relative of the child appears at the first or any subsequent hearing in the case; or

B. The Court finds that there may be a conflict of interest between the child and his/her parent, guardian, or other legal custodian; or

C. The Court finds that it is in the child's interest and necessary for his/her welfare, whether or not a parent, guardian, or other legal custodian is present.

3. The Court may appoint a guardian ad litem for any parent in proceedings who has been determined to be mentally ill by a court of competent jurisdiction, or is developmentally disabled; except that, if a conservator has been appointed, the conservator may serve as the guardian ad litem. If the conservator does not serve as guardian ad litem, he/she shall be informed that a guardian ad litem has been appointed.
4. At the time any child first appears in Court, if it is determined that he/she has no guardian of his/her person, the Court shall appoint a guardian of the child before proceeding with the matter.
5. In all proceedings brought for the protection of a child suffering from abuse or non-accidental injury, a guardian ad litem shall be appointed for said child. Said guardian shall have the power to represent the child in the legal proceedings.
6. All guardian ad litems shall, whenever practical, be required to personally visit the place of residence of the child. [TCR 86-79]

4-308 Guardian ad litem duties. In the course of discharging duties as guardian ad litem, the person so appointed shall consider, but not be limited to, the criteria provided in this Section. The guardian ad litem:

1. Is appointed to stand in lieu of a parent for a protected juvenile who is the subject of a Juvenile Court petition and shall be present at all hearings before the Court in such matter unless expressly excused by the Court, and may enter into such stipulations and agreements concerning adjudication and disposition deemed by him/her to be in the juvenile's best interests.
2. Is not appointed to prosecute or defend the parents or other custodian of the protected juvenile, but shall defend the legal and social interests of such juvenile. Social interest shall be defined generally as the usual and reasonable expectations of society for the appropriate parental custody and protection and quality of life for juveniles without regard to the socioeconomic status of the parents or other custodians of the juvenile.
3. May at any time after the filing of the petition move the Court of jurisdiction to provide medical or psychological treatment or evaluation that may be needed. The guardian ad litem shall have access to all reports resulting from any examination ordered and such reports shall be used for evaluating the status of the protected juvenile.
4. Shall make every reasonable effort to become familiar with the needs of the protected juvenile which may include:
   A. Visitation with the juvenile within two weeks after the appointment and once every six months thereafter; and
   B. Consultation with caseworkers, physicians, psychologists, foster parents or other custodians, teachers, clergy members, and others directly involved with the juvenile or who may have information or knowledge about the circumstances which brought the Juvenile Court action or related cases, and the development of the juvenile.
5. May present evidence and witnesses and cross-examine witnesses at all evidentiary hearings.
6. Shall be responsible for making recommendations to the Court regarding the temporary and permanent placement of the protected juvenile.
7. Shall consider such other information as is warranted by the nature and circumstances of a particular case.
8. May file a petition in the Juvenile Court on behalf of the juvenile. [TCR 86-79]

4-309 Adjudicatory hearing.

1. At the adjudicatory hearing, which shall be conducted as provided in the rules of juvenile procedure, except that the rules of criminal procedure shall apply in delinquency cases, the Court shall consider whether the allegations of the petition are supported by evidence beyond a reasonable doubt in cases concerning delinquent children or children in need of supervision or by

a preponderance of the evidence in cases concerning neglected or dependent children or children-in-need-of-care; except that jurisdictional matters of the age and residence of the child shall be deemed admitted by or on behalf of the child unless specifically denied prior to the adjudicatory hearing.

2. When it appears that the evidence presented at the hearing discloses issues not raised in the petition, the Court may proceed immediately to consider the additional or different matters raised by the evidence if the parties consent.
3. In such event, the Court, on the motion of any interested party or on its own motion, shall order the petition to be amended to conform to the evidence.
4. If the amendment results in a substantial departure from the original allegations in the petition, the Court shall continue the hearing on the motion of any interested party, or the Court may grant a continuance on its own motion if it finds it to be in the best interests of the child or any other party to the proceeding.
5. An adjudicatory hearing shall be held within ten days of receipt of the petition by the Court. The Court shall conduct the hearing for the sole purpose of determining the guilt or innocence of a juvenile offender or for determining if a minor is a minor-in-need-of-care, dependent or neglected.
6. If it appears from the evidence that the child may be mentally ill or developmentally disabled the Court shall proceed under Section 4-310.
7. Before making an adjudication, the Court may continue the hearing from time to time, allowing the child to remain in his/her own home or in the temporary custody of another person or agency subject to such conditions of conduct and of visitation or supervision by the department or Bureau of Indian Affairs Social Services Department as the Court may prescribe, if:
   A. Consent is given by the child and his/her parent, guardian, or other legal custodian after being fully informed by the Court of their rights in the proceeding, including their right to have an adjudication made either dismissing or sustaining the petition;
   B. Such continuation shall extend no longer than six months without review by the Court. Upon review, the Court may continue the case for any additional period not to exceed six months, after which the petition shall be either dismissed or sustained.
8. When the Court finds that the allegations of the petition are not supported by evidence beyond a reasonable doubt in cases concerning children-in-need-of-supervision or by a preponderance of the evidence in cases concerning neglected or dependent children, the Court shall order the petition dismissed and the child discharged from any detention or restriction previously ordered. His/her parents, guardian, or other legal custodian shall also be discharged from any restriction or other previous temporary order.
9. When the Court finds that the allegations of the petition are supported by evidence beyond a reasonable doubt in cases concerning children-in-need-of-supervision or juvenile delinquency or by a preponderance of the evidence in cases concerning neglected or dependent child, the Court shall:
   A. Sustain the petition and shall make an order of adjudication setting forth whether the child is in need of supervision, or neglected or dependent. In cases concerning neglected or dependent children, evidence that child abuse or non-accidental injury has occurred shall constitute prima facie evidence that such child is neglected or dependent and such evidence shall be sufficient to support an adjudication under this Section;
   B. The Court shall then hold the dispositional hearing but such hearing may be continued on the motion of any interested party or on the motion of the Court. [TCR 86-79]

4-310 Mentally ill and developmentally disabled children.

1. If it appears from the evidence presented at an adjudicatory hearing or otherwise that the child may be mentally ill or developmentally disabled, as these terms are defined in this Section, the

Court shall order that the child be examined by a physician, psychiatrist, or psychologist and may place the child in a hospital or other suitable facility for the purpose of examination for a period not to exceed thirty days.

2. A suitable facility for the purpose of examination shall be a facility designated by the Court for treatment and evaluation, but neither a Tribal, city or county jail nor a detention facility shall be considered a suitable facility under any circumstances.
3. If the report of the examination made pursuant to subsection (1) of this Section states that the child is mentally ill to the extent that hospitalization or institutional confinement and treatment is required, the Court may order such hospitalization, institutional confinement, or treatment prior to or after adjudication.
4. The Court may dismiss the original petition when a child who has been ordered to receive treatment is no longer receiving treatment.
5. The Court shall set a time for resuming the hearing on the original petition when:
   A. The report of the examination made pursuant to subsection (1) of this Section states that the child is not mentally ill to the extent that hospitalization or institutional confinement and treatment are required;
   B. The child is found not to be mentally ill;
   C. The report of the examination made pursuant to subsection (1) of this Section states that the child is developmentally disabled but not mentally ill.
6. "Mentally ill person" means a person who is of such mental condition that he/she is in need of supervision, treatment, care, or restraint.
7. "Developmental disability" means a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or a neurological impairment, which may have originated during the first nineteen (19) years of life which can be expected to continue indefinitely, and which constitutes a substantial handicap.
8. "Mentally retarded person" means a person whose intellectual functions have been deficient since birth or whose intellectual development has been arrested or impaired by disease or physical injury to such an extent that he/she lacks sufficient control, judgment, and discretion to manage his/her property or affairs or who, by reason of this deficiency and for his/her own welfare or the welfare or safety of others, requires protection, supervision, guidance, training, control, or care. [TCR 86-79-15-127]

4-311 Consent decree. At any time during the adjudicatory process, but prior to the entry of an order sustaining the petition or provided in Section 4-302 of this Title, a consent decree may be entered as provided in Section 4-305 of this Title. [TCR 86-79]

4-312 Dismissal of petition. When the Court finds that the allegations of the petition are not supported by evidence beyond a reasonable doubt in cases concerning delinquent children or children in need of supervision or by clear and convincing evidence in cases concerning neglected or dependent children, the Court shall order the petition dismissed and the child discharged from any detention or restriction previously ordered. His/her parents, guardian, or other legal custodian shall also be discharged from any restriction on the previous temporary order. [TCR 86-79]

4-313 Sustaining petition. When the Court finds that the allegations of the petition are supported by evidence beyond a reasonable doubt in cases concerning delinquent children or children-in-need-of-supervision or by clear and convincing evidence in cases concerning neglected or dependent children, the Court shall sustain the petition and make an order of adjudication setting forth whether the child is delinquent, in need of supervision, or neglected or dependent and making the child a ward of the Court. In cases concerning neglected or dependent children, evidence that child abuse or non-accidental injury has occurred shall constitute prima facie evidence that such child is neglected or dependent and such evidence shall be sufficient to support an adjudication under this Section. [TCR 86-79]

4-314 Temporary orders. Upon sustaining a petition, the Court shall make such dispositional orders as may be necessary to protect the child prior to the dispositional hearing which shall be held without undue delay. [TCR 86-79]

TITLE 4
ARTICLE 4
DISPOSITION

4-401 Pre-dispositional report.
4-402 Treatment plan.
4-403 Dispositional hearing.
4-404 Hearing purpose.
4-405 Hearing informal.
4-406 Medical examination.
4-407 Continuance.
4-408 Order of protection.
4-409 Placement preferences.
4-410 Neglected or dependent child or in-need-of-care; disposition.
4-411 Child-in-need-of-supervision; disposition.
4-412 Delinquent child; disposition.
4-413 Legal custody; guardianship.
4-414 Probation for delinquents and children in need of supervision.
4-415 Violation of probation.
4-416 New hearing authorized.
4-417 Continuing jurisdiction.
4-418 Permanency Hearings.
4-419 Guardianships as Recommended by the Department for permanence.

4-401 Pre-dispositional report.

1. The department shall prepare and present a written report to the Court at least one day before a dispositional hearing. The report shall contain a specific plan for the care and assistance to the minor or his/her parents, guardian, or custodian which is calculated to resolve the problems presented in the petition.
2. The Court may order any agency within its jurisdiction and request any other agency to prepare and submit to the Court after the adjudication and prior to disposition a social study, home study, family or medical history or other reports which may be helpful in determining proper treatment and disposition for the family.
3. After adjudication, the Court may order or request, as appropriate, any agency to submit any pre-adjudicatory social studies or reports helpful in determining proper treatment and disposition for the family. [TCR 86-79]

4-402 Treatment plan.

1. In every case, the Court shall order the department and/or the Bureau of Indian Affairs Social Services Department to prepare a detailed treatment plan for the treatment and disposition of the problems identified in the adjudication.
2. The treatment plan shall contain at a minimum:
   A. A brief social and family history;
   B. A brief statement of the Court's jurisdiction in this matter;
   C. The specific actions the parents, guardian, legal custodian or child should be ordered to do or refrain from doing and the reasons therefore;
   D. The specific treatment or other social services offered by the Tribe or Bureau of Indian Affairs which the family should be required to accept;
   E. The person or agency to be vested with custody of the child if the child cannot remain in his/her own home, and a detailed plan describing how and when the child will be returned to his/her home under supervision and when Court supervision should cease.
3. The treatment plan shall be filed with the Court and a copy delivered to the parties at least five days prior to the dispositional hearing. [TCR 86-79]

4-403 Dispositional hearing. After making an order of adjudication, finding the child to be a ward of the Court, the Court shall hear evidence on the question of the proper disposition best serving the interests of the child and the Tribe at a hearing scheduled for that purpose. [TCR 86-79]

4-404 Hearing purpose.

4-405 Hearing informal. The dispositional hearing shall be informal and the general rules of procedure and evidence shall not apply so that all pertinent information may be considered in determining treatment and disposition. However, when feasible, the Court shall order the writer of any report or study to appear and answer questions regarding that report if it be challenged by any party. [TCR 86-79]

4-406 Medical examination. The Court may have the child examined by a physician, psychiatrist, or psychologist, and the Court may place the child in a hospital or other suitable facility for this purpose. [TCR 86-79]

4-407 Continuance.

1. The Court may continue the dispositional hearing, either on its own motion or on the motion of any interested party, for a reasonable period to receive reports or other evidence, but the Court shall continue the hearing for good cause on the motion of any interested party in any case where the termination of the parent-child legal relationship is a possible remedy.
2. If the hearing is continued, the Court shall make an appropriate order for detention of the child or for his/her release to the custody of his/her parents, guardian, or other responsible person or agency under such conditions of supervision as the Court may impose during the continuance.
3. In scheduling investigations and hearings, the Court shall give priority to proceedings concerning a child who is in detention or who has otherwise been removed from his/her home before an order of disposition has been made. [TCR 86-79]

4-408 Order of protection.

1. The Court may make an order of protection in assistance of, or as a condition of, any decree of disposition authorized by this Article. The order of protection may set forth reasonable conditions of behavior to be observed for a specified period by the parent, guardian, or any other person who is a party to the proceeding.
2. The order of protection may require any such person:
   - A. To stay away from a child or his/her residence;
   - B. To permit a parent to visit a child at stated periods;
   - C. To abstain from offensive conduct against a child, his/her parent or parents, guardian, or any other person to whom legal custody of a child has been given;
   - D. To give proper attention to the care of the home;
   - E. To cooperate in good faith with an agency:
     - i. Which has been given the legal custody of a child.
     - ii. Which is providing protective supervision of a child by Court order; or
     - iii. To which the child has been referred by the Court;
   - F. To refrain from acts of commission or omission that tend to make a home an improper place for a child; or
   - G. To perform any legal obligation of support.
3. When such an order of protection is made applicable to a parent or guardian, it may specifically require his/her active participation in the rehabilitation process and may impose specific requirements upon such parent or guardian, subject to the penalty of contempt for failure to comply with such order without good cause, as provided in subsection (5) of this Section.

4. After notice and opportunity for hearing is given to a person subject to an order of protection, the order may be terminated, modified, or extended for a specified period of time if the Court finds that the best interests of the child and the Tribe will be served thereby.
5. A person failing to comply with an order of protection without good cause may be found in contempt of Court. [TCR 86-79]

4-409 Placement preferences.

1. In making a placement of or committing legal custody of a child to some person in the dispositional process whether for foster care or adoption, the Court shall place the child, in the following descending order of preference (For Winnebago kinship references see chart at Section 4-135):
    i. The biological parents.
    ii. The child's grandparent which are those persons designated as Coka or Gaga under the Winnebago traditional kinship system.
    iii. Any person with the title of Nani (sister of the biological mother) or Jagi (brother of the biological father) in the Winnebago kinship system.
    iv. Any person designated as Cuwi (pronounced "Chu wee", the sister of the biological father) or Tega (brother of the biological mother).
    v. Any other person who is a member of the child's family, not limited to brother (Toto) or sister (Nunu), brother in law or sister in law, niece or nephew or Little Tega or Little Nani.
    vi. A traditional custodian who is a member of the Tribe.
    vii. A traditional custodian who is a member of another Indian tribe.
    viii. An Indian foster family home licensed by the department.
    ix. A foster family home licensed by any other licensing authority within the state or an Indian foster home licensed by some other tribe.
    x. Any other member of the Tribe.
    xi. Any other Indian person.
    xii. A child care institution licensed or approved by the department with a program suitable to meet the child's needs.

2. The Court shall make every effort to place the child on-reservation but done in accordance with the placement preferences above and any placement shall take into consideration, on-reservation resources or the resources of another tribe and that any placement is in the best interests of the child and the tribe.
3. In a case where a child has exceptional therapeutic, psychological, emotional, or behavioral needs, the Court may, upon the recommendation of the placement authority, deviate from these preferences in order to meet the special needs of that particular child.
4. Where appropriate, the Court may consider the preference of the parents and the proximity of the prospective foster family home to the child's home in applying these preferences.
5. For each possible placement, the Court shall consider the willingness, fitness, ability, suitability, and availability of each person in a placement category before considering the next lower level of placement preference.
6. The Court may place the child with the department or a child placement agency approved by the department or the Tribal Council for further placement in lieu of a direct placement pursuant to subsection (1) of this Section. When the Court does so, the agency shall place said child in accordance with the preferences described above, and any person having a prior preference may petition the Court to review the placement of a lower preference made by that agency.
7. State courts shall follow the placement preference rules outlined herein. [TCR 86-79, 04-11, 15-127]

4-410 Neglected or dependent child or in-need-of-care; disposition.

1. When a child has been adjudicated to be neglected or dependent or in-need-of-care, the Court shall enter a decree of disposition. When the decree does not terminate the parent-child legal relationship, it shall include one or more of the following provisions which the Court finds appropriate:
   A. The Court may place the child in the legal custody of one or both parents or the guardian, with or without protective supervision, under such conditions as the Court may impose.
   B. The Court may place the child in the legal custody of a relative or other suitable person, with or without protective supervision, under such conditions as the Court may impose, in accordance with Section 4-409 of this Title.
   C. The Court may place custody in the department or a child placement agency for placement in a foster family home or child care institution in accordance with Section 4-409.
   D. The Court may order that the child be examined or treated by a physician, surgeon, psychiatrist, or psychologist or that he/she receive other special care and may place the child in a hospital or other suitable facility for such purposes.
2. The Court may enter a decree terminating the parent-child legal relationship of one or both parents when all reasonable efforts to treat the family have failed.
3. Upon the entry of a decree terminating the parent-child legal relationship of both parents, of the sole surviving parent, or of the mother of a child born out of wedlock, the Court may:
   A. Vest the department or child placement agency with the custody and guardianship of the child for the purpose of placing the child for adoption according to the placement preferences; or
   B. Make any other disposition that the Court finds appropriate.
4. Upon the entry of a decree terminating the parent-child legal relationship of one parent, the Court may:
   A. Leave the child in the legal custody of the other parent and discharge the proceedings; or
   B. Make any other disposition that the Court finds appropriate.
5. When a child has been adjudicated neglected because he/she has been abandoned by his/her parent, or parents, the Court may enter a decree terminating the parent-child legal relationship if it finds:
   A. That the parent or parents having legal custody have willfully surrendered physical custody for a period of six months and during this period have not manifested to the child or the person having physical custody a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or
   B. That the identity of the parent or parents of the child is unknown and has been unknown for a period of ninety days and that reasonable efforts to identify and locate the parents have failed.
6. In placing the legal custody or guardianship of the person of a child with an individual or a private agency, the Court shall give primary consideration to the welfare of the child, but shall take into consideration the religious preferences of the child or of his/her parents whenever practicable.
   A. When a child has been placed in the legal custody of CFS under this section, CFS may recommend that a guardianship with a relative or other appropriate individual be put in place after reasonable efforts have been made to work with the parent or parent(s) of the child. A guardianship under this section shall follow the requirements of 4-419. [TCR 86-79, 90-24, 15-127]

4-411 Child-in-need-of-supervision; disposition. When a child has been as being in-need-of-supervision, the Court shall enter a decree of disposition containing one or more of the following provisions which the Court finds appropriate:

1. The Court may place the child on probation or under protective supervision in the legal custody of one or both parents or the guardian under such conditions as the Court may impose.
2. The Court may place the child in the legal custody of a relative or other suitable person under such conditions as the Court may impose, which may include placing the child on probation or under protective supervision in accordance with Section 4-409 of this Title.
3. The Court may require as a condition of probation that the child report for assignment to a supervised work program or place such child in a child care facility which shall provide a supervised work program, if:
   A. The child is not deprived of the schooling which is appropriate to his/her age, needs, and specific rehabilitative goals;
   B. The supervised work program is of a constructive nature designed to promote rehabilitation, is appropriate to the age level and physical ability of the child, and is combined with counseling from guidance personnel;
   C. The supervised work program assignment is made for a period of time consistent with the child's best interest, but not exceeding one hundred eighty (180) days.
4. The Court may place custody in the department or a child placement agency for placement in a foster family home or child care institutions.
5. The Court may order that the child be examined or treated by a physician, surgeon, psychiatrist, or psychologist, or that he/she receive other special care, and may place the child in a hospital or other suitable facility for such purposes.
6. The Court may commit the child to any institution or group care facility designated by the Court. [TCR 86-79, 90-24, 15-127]

4-412 Delinquent child; disposition. If a child has been adjudicated as being delinquent, the Court shall transmit, with the commitment order, a copy of the petition, the order of adjudication, copies of the social study, any clinical or educational reports, and other information pertinent for the care and treatment of the child, to an institution designated by the Court.

1. The designated institution shall provide the Court with any information concerning a child committed to its care which the Court at any time may require.
2. A commitment of a child to a designated institution under Section 4-411 or Section 4-412 shall be for an indeterminate period not to exceed two years.
3. The department may petition the committing court to extend the commitment for an additional period not to exceed two years. The petition shall set forth the reasons why it would be in the best interest of the child or the public to extend the commitment. Upon filing the petition, the Court shall set a hearing to determine whether the petition should be granted or denied and shall notify all interested parties.
4. Each commitment to a designated institution shall be reviewed no later than six months after it is entered and each six months thereafter. [TCR 86-79]

4-413 Legal custody; guardianship.

1. Any individual, agency, or institution vested by the Court with legal custody of a child shall have the rights and duties defined in Article 1, Section 4-102(29).
2. Any individual, agency, or institution vested by the Court with guardianship of the person of a child shall have rights and duties of custody; except that no guardian of the person may consent to the adoption of a child unless that authority is expressly given him/her by the Court.

3. If legal custody or guardianship of the person is vested in an agency or institution, the Court shall transmit, with the Court order, copies of the social study, any clinical reports, and other information concerning the care and treatment of the child.
4. An individual, agency, or institution having legal custody or guardianship of the person of a child shall give the Court any information concerning the child which the Court at any time may require.
5. Any agency vested by the Court with legal custody of a child shall have the right, subject to the approval of the Court, to determine where and with whom the child shall live.
6. No individual vested by the Court with legal custody of a child shall remove the child from the State for more than thirty days without Court approval.
7. A decree vesting legal custody of a child in an individual, institution, or agency shall be for an indeterminate period, not to exceed two years from the date it was entered. Such decree shall be reviewed by the Court no later than six months after it is entered.
8. The individual, institution, or agency vested with the legal custody of a child may petition the Court for renewal of the decree. The Court, after notice and hearing, may renew the decree for such additional period as the Court may determine, if it finds such renewal to be in the best interest of the child. The findings of the Court and the reasons therefore shall be entered with the order renewing or denying renewal of the decree.
9. No legal custodian or guardian of the person may be removed without his/her consent until given notice and an opportunity to be heard by the Court if he/she so requests. [TCR 86-79]

4-414 Probation for delinquents and children in need of supervision.

1. The terms and conditions of probation shall be specified by rules or orders of the Court. The Court, as a condition of probation for a child who is fourteen years of age or older but less than nineteen years of age on the date of the dispositional hearing, has the power to impose a commitment, placement, or detention, whether continuous or at designated intervals, which shall not exceed forty five days. Each child placed on probation shall be given written statement of the terms and conditions of his/her probation and shall have such terms and conditions fully explained to him/her.
2. The Court shall review the terms and conditions of probation and the progress of each child placed on probation at least once every six months.
3. The Court may release a child from probation or modify the terms and conditions of his/her probation at any time, but any child who has complied satisfactorily with the terms and conditions of his/her probation for a period of two years shall be released from probation, and the jurisdiction of the Court shall be terminated. [TCR 86-79, 15-127]

4-415 Violation of probation.

1. When it is alleged that a child has violated the terms and conditions of his/her probation, the Court shall set a hearing on the alleged violation and shall give notice to the child and his/her parents, guardian or other legal custodian, and any other parties to the proceeding.
2. The child, his/her parents, guardian, or other legal custodian shall be given a written statement concerning the alleged violation and shall have the right to be represented by counsel at the hearing, at his/her or their own cost, and shall be entitled to the issuance of compulsory process for the attendance of witnesses.
3. The hearing on the alleged violation shall be conducted as soon as possible.
4. If the Court finds that the child violated the terms and conditions of probation, it may modify the terms and conditions of probation, revoke probation, or make such other action as permitted by this Article which is in the best interest of the child and the Tribe.

5. If the Court finds that the child did not violate the terms and conditions of his/her probation as alleged, it shall dismiss the proceedings and continue the child on probation under the terms and conditions previously described.
6. If the Court revokes the probation of a person over nineteen years of age, in addition to other action permitted by this Article, the Court may sentence him/her to the Tribal jail for a period not to exceed one hundred eighty days during which he/she may be released during the day for school attendance, job training, or employment, as ordered by the Court. [TCR 86-79, 15-127]

4-416 New hearing authorized.

1. A parent, guardian, custodian, or next friend of any child adjudicated under this Article, or any person affected by a decree in a proceeding under this Article, may petition the Court for a new hearing on the following grounds:
   A. That new evidence, which was not known or could not with due diligence have been made available at the original hearing and which might affect the decree, has been discovered;
   B. That irregularities in the proceedings prevented a fair hearing.
2. If it appears to the Court that the motion should be granted, it shall order a new hearing and shall make such disposition of the case as warranted by all the facts and circumstances and the best interest of the child. [TCR 86-79, 15-127]

4-417 Continuing jurisdiction. Except as otherwise provided in this Article, the jurisdiction of the Court over any child adjudicated as neglected or dependent or in-need-of-care, or in-need-of-supervision, or delinquent shall continue until he/she becomes nineteen years of age unless terminated by Court order. [TCR 86-79, 15-127]

4-418 Permanency Hearings

1. The Court shall hold a permanency hearing to determine the permanent plan for the child. The permanency hearing may be combined with the periodic review hearing. The permanency hearing shall be held within twelve (12) months from the date that a child enters foster care, or within thirty (30) days after the Court finds that reasonable efforts to reunite the family are no longer required. A child shall be considered to have entered foster care on the earlier of the following two (2) dates: (1) The date of the adjudicatory hearing finding that the child is a child-in-need-of-care; or (2) The date that is sixty (60) days after the date the child was removed from the home.
2. At least 2 days prior to the permanency hearing, the Department will develop and submit to the Court a report that recommends and justifies a permanent placement option for the child. The report will consider the appropriateness of parental reunification, adoption, legal guardianship, permanent placement with fit relative, or an alternate planned permanent living arrangement. The Department shall make its placement recommendations based upon the best interests of the child.
3. For any child who continues to be in an out-of-home placement, subsequent permanency hearings shall be held at least every six (6) months from the date of the previous permanency hearing until jurisdiction over the child terminates.
4. At each permanency hearing, the Court shall consult with the child in an age-appropriate manner regarding the proposed permanency plan and include the following in its orders:
   A. whether the current permanency plan for the child remains the appropriate plan to meet the health, safety, welfare, and best interests of the child;
   B. the extent of compliance with the permanency plan for the child;
   C. the adequacy of services provided to the child and the child's parent(s), guardian or legal custodian to reunite the family within a reasonable period of time and to find a permanent home for the child in the event that reunification is not possible; and

D. whether additional services are necessary to support the permanent plan, including services needed to assist the child to make a transition from foster care to successful adulthood for any child that has attained age 14.

5. In addition to the foregoing requirements in this section, for any child for whom another planned permanent living arrangement is the permanency plan determined for the child:
   A. the Department shall document in its report
      i. the intensive, ongoing, and, as of the date of the hearing, unsuccessful efforts made by the agency to return the child home or secure a placement for the child with a fit and willing relative (including adult siblings), a legal guardian, or an adoptive parent, including through efforts that utilize search technology (including social media) to find biological family members for the children; and
      ii. the steps the Department is taking to ensure that:
         a. the child's foster family home or child care institution is following the reasonable and prudent parent standard; and
         b. the child has regular, ongoing opportunities to engage in age or developmentally appropriate activities (including by consulting with the child in an age-appropriate manner about the opportunities of the child to participate in the activities).
   B. at the permanency hearing, the Tribal Court shall:
      i. ask the child about the desired permanency outcome for the child; and
      ii. make a judicial determination explaining why, as of the date of the hearing, another planned permanent living arrangement is the best permanency plan for the child and provide compelling reasons why it continues to not be in the best interests of the child to return home; be placed for adoption; be placed with a legal guardian; or be placed with a fit and willing relative. [TCR 15-127]

4-419 Guardianships as Recommended by CFS for permanence. CFS does not recommend the termination of parental rights of children except in extreme circumstances as outlined in Section 4-601. The preferred method of providing permanence for a child is a guardianship in accordance with the placement preferences listed in Section 4-409.

The potential guardians(s) of the child shall file, with assistance from CFS if requested, for a guardianship of the child following the procedures in Title 18 of this Code. However, if a guardianship is brought under this Title 4, CFS, as the current legal custodian of the child, shall be a party to the case.

The guardianship order under this section shall confer upon the guardian the ability to not only act as a guardian but as a conservator as well.

Guardianship Report.

1. Upon being served with a Guardianship Petition involving a minor under the legal custody of CFS pursuant to Title 4 of this Code, CFS shall prepare a Guardianship Report on the proposed guardian(s), and child.
2. The Guardianship Report shall contain all pertinent information necessary to assist the Court in determining the best interests of the child.
3. No determination may be made on a Guardianship Petition involving a minor under the legal custody of CFS pursuant to Title 4 of this Code until the report has been completed and submitted to and considered by the Court.
4. CFS shall appear at the Guardianship Hearing to answer any questions the Court may have involving the Guardianship Report.
5. The Court may order additional reports as it deems necessary.

Procedure. The procedure involving guardianships shall follow Title 18 of this Code unless such procedure is contradicted by this Section in which case this Section shall govern.

The underlying protection case shall not be dismissed until after a guardianship brought under this section is granted. [TCR 15-127]

TITLE 4
ARTICLE 5
CHILD ABUSE

4-501 Legislative purpose.
4-502 Definitions.
4-503 Persons required to report child abuse or neglect.
4-504 Required report of postmortem investigation.
4-505 Evidence of abuse.
4-506 Temporary protective custody.
4-507 Reporting procedures.
4-508 Action upon receipt of report.
4-509 Child protection teams.
4-510 Immunity from liability.
4-511 Child abuse and child neglect diversion program..
4-512 Evidence not privileged.
4-513 Court proceedings; guardian ad litem.
4-514 Central registry.
4-515 Confidentiality of records.

4-501 Legislative purpose. The Tribal Council hereby declares that the complete reporting of child abuse is a matter of Tribal concern and that in enacting this Article it is the intent of the Tribe to protect the children within the jurisdiction of the Tribe and to offer protective services in order to prevent any further harm to a child suffering from abuse. It is the further intent of the Tribe that the various federal, state and Tribal medical, mental health, education and social services agencies impacting on child welfare matters find a common purpose through cooperative participation in the child protection teams created in this Article. [TCR 86-79]

4-502 Definitions. As used in this Article, unless the context otherwise requires:

1. "Abuse" or "child abuse or neglect" means an act or omission in one of the following categories which seriously threatens the health or welfare of a child:
   A. Any case in which a child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling or death, and such condition or death is not justifiably explained, or where the history given concerning such condition or death is at variance with the degree or type of such condition or death, or circumstances indicate that such condition or death may not be the product of an accidental occurrence;
   B. Any case in which a child is subject to sexual assault or molestation;
   C. Any case in which the child's parents, legal guardians, or custodians fail to take the same actions to provide adequate food, clothing, shelter, or supervision that a prudent parent would take.
   D. In all cases, those investigating reports of child abuse shall take into account accepted child-rearing practices of the culture in which the child participates. Nothing in this subsection shall refer to acts which could be construed to be a reasonable exercise of parental discipline.
2. "Child protection team" means a multidisciplinary team consisting, where possible, of a physician, a representative of the Juvenile Court, a representative of the Tribal law enforcement agency, a representative of a non-tribal law enforcement agency, a representative of the Tribal Child and Family Services or Bureau of Indian Affairs Social Services Department, a representative of the state social services department, an attorney, a representative of the local school district, and one or more representative of the lay community. Each agency may have more than one participating member on the team; except that, in voting on procedural or policy matters, each agency shall have only one vote. In no event shall an attorney member of the child protection team be appointed as guardian for the child or as counsel for the parents at any

subsequent court proceedings, nor shall the child protection team be composed of fewer than three persons. The role of the child protection team shall be advisory only.

3. "Tribal department" means the Tribal, or, where appropriate, the Bureau of Indian affairs, police department or social services, or Tribal Child and Family Services.
4. "Law enforcement agency" means a Tribal or Bureau of Indian Affairs police department, or a law enforcement officer of the state.
5. "Neglect" means acts which can reasonably be construed to fall under the definition of "child abuse or neglect" as defined in subsection (1) of this Section.
6. "Receiving agency" means the department or law enforcement agency first receiving a report of alleged child abuse.
7. "Responsible person" means a child's parent, legal guardian, or custodian or any other person responsible for the child's health and welfare.
8. "Unfounded report" means any report made pursuant to this Article which is not supported by some credible evidence. [TCR 86-79]

4-503 Persons required to report child abuse or neglect.

1. Any person who has reasonable cause to know or suspect that a child has been subjected to abuse or neglect or who has observed the child being subjected to circumstances or conditions which would reasonably result in abuse or neglect shall immediately report or cause a report to be made of such fact to the Tribal department or appropriate law enforcement agency.
2. Person required to report such abuse or neglect or circumstances or conditions shall include any:
   A. Physician or surgeon, including a physician in training;
   B. Child health associate or community health representative (CHR);
   C. Medical examiner or coroner;
   D. Dentist;
   E. Osteopath;
   F. Optometrist;
   G. Chiropractor;
   H. Chiropodist or podiatrist;
   I. Registered nurse or licensed practical nurse;
   J. Hospital personnel engaged in the admission, care or treatment of patients;
   K. School official or employee, including preschool and Head Start programs;
   L. Social worker or worker in a foster family home or child care institution;
   M. Mental health professional;
   N. Any law enforcement personnel;
   O. The Tribal prosecutor or his assistants.
3. In addition to those persons specifically required by this Section to report known or suspected child abuse or neglect and circumstances or conditions which might reasonably result in abuse or neglect, any other person may report known or suspected child abuse or neglect and circumstances or conditions which might reasonably result in child abuse or neglect to the Tribal law enforcement agency or the Tribal department.
4. Any person who willfully violates the provisions of this Section:
   A. Shall be subject to a civil penalty not to exceed five hundred dollars ($500.00); and
   B. Shall be liable for damages approximately caused thereby; and
   C. May be prosecuted criminally pursuant to the criminal Code of this Tribe. [TCR 86-79, 15-127]

4-504 Required report of postmortem investigation.

1. Any person who is required to report known or suspected child abuse or neglect who has reasonable cause to suspect that a child died as a result of child abuse or neglect shall report such fact immediately to the appropriate law enforcement agency and to the appropriate coroner or medical examiner. The law enforcement agency and the coroner or medical examiner shall accept such report for investigation and shall report their findings to the Tribal law enforcement agency, the Tribal prosecutor, and the Tribal department.
2. The Tribal department shall forward a copy of such report to the central registry. [TCR 86-79]

4-505 Evidence of abuse.

1. Any child health associate, person licensed to practice medicine, registered nurse or licensed practical nurse, hospital personnel engaged in the admission, examination, care or treatment of patients, medical examiner, coroner, social worker, or local law enforcement officer who has before him/her a child he/she reasonably believes has been abused or neglected may take or cause to be taken color photographs of the areas of trauma visible on the child. If medically indicated, such person may take or cause to be taken X-rays of the child.
2. Any color photographs or X-rays which show evidence of child abuse shall be immediately forwarded to a receiving agency. [TCR 86-79]

4-506 Temporary protective custody. The Chief Judge of the Tribal Court shall be responsible for making available a person appointed by the Chief Judge, who may be the juvenile judge, a magistrate, referee, or any other officer of the Court, to be available by telephone at all times to act with the authorization and authority of the juvenile division of the Court when no judicial officer is present in the Court, to issue written or verbal temporary protective custody orders, or in the alternative or in addition thereto, the Chief Judge may enter his/her general order detailing the procedure to be used in taking children into custody on an emergency basis when no judge or magistrate is present at the Court. These orders may be requested by the Tribal department, a Tribal law enforcement officer, an administrator of a hospital in which a child is reasonably believed to have been abused or neglected or is being treated, or any physician who has before him/her a child he/she reasonably believes has been abused or neglected, whether or not additional medical treatment is required, if the belief that circumstance or the condition of the child is such that continuing in his/her place of residence or in the care and custody of the person responsible for his/her care and custody would present an imminent danger to that child's life or health. The Tribal department shall be notified of such action immediately by the Court-appointed official in order that child protective proceedings may be initiated. In any case, such temporary custody under this Section shall not exceed seventy-two hours notwithstanding any provision of law to the contrary.
[TCR 86-79]

4-507 Reporting procedures.

1. Report of known or suspected child abuse or neglect made pursuant to this Article shall be made immediately to the Tribal department or law enforcement agency and shall be followed promptly by a written report prepared by those persons required to report. The receiving agency shall forward a copy of its own report to the central registry on forms supplied by the Tribal department.
2. Such reports, when possible, shall include the following information:
   A. The name, address, age, sex, and race of the child;
   B. The name and address of the responsible person;
   C. The nature and extent of the child's injuries, including any evidence of previous known or suspected abuse or neglect to the child or the child's siblings;

D. The names and addresses of the persons responsible for the suspected abuse and neglect, if known;
E. The family composition;
F. The source of the report and the name, address, and occupation of the person making the report;
G. Any action taken by the reporting source;
H. Any other information that the person making the report believes may be helpful in furthering the purposes of this Section.

3. A copy of the report of known or suspected child abuse or neglect shall be transmitted immediately by the receiving agency to the Tribal prosecutor's office and to the Tribal law enforcement agency.
4. A written report from persons or officials required by this Article to report known or suspected child abuse or neglect shall be admissible as evidence in any proceeding related to child abuse. [TCR 86-79]

4-508 Action upon receipt of report.

1. The receiving agency shall make a thorough investigation immediately upon receipt of any report of known or suspected child abuse or neglect. The immediate concern of such investigation shall be the protection of the child.
2. The investigation, to the extent that it is reasonably possible, shall include:
   A. The nature, extent, and cause of the abuse or neglect;
   B. The identity of the person responsible for such abuse or neglect;
   C. The names and conditions of any other children living in the same place;
   D. The environment and the relationship of any children therein to the person responsible for the suspected abuse or neglect;
   E. All other data deemed pertinent.
3. The investigation shall, at a minimum, include a visit to the child's place of residence or place of custody and to the location of the alleged abuse or neglect and an interview with or observance of the child reportedly having been abused or neglected. If admission to the child's place of residence cannot be obtained, the Juvenile Court, upon good cause, shall order the responsible person to allow the interview, examination and investigation.
4. The Tribal department shall be the receiving agency responsible for the coordination of all investigations of all reports of known or suspected child abuse or neglect. The Tribal department shall arrange for such investigations to be conducted by persons trained to conduct either the complete investigation or such parts thereof as may be assigned. The Tribal department may conduct the investigation independently or in conjunction with another appropriate agency or may arrange for the initial investigation to be conducted by another agency with personnel having appropriate training and skill. The Tribal department shall provide for persons to be continuously available to respond to such reports. Tribal and state and federal agencies may cooperate to fulfill the requirements of this subsection. As used in this subsection, "continuously available" means the assignment of a person to be near an operable telephone not necessarily located in the premises ordinarily used for business by the Tribal department or to have such arrangements made through agreements with local law enforcement agencies.
5. Upon receipt of a report, if the Tribal department reasonably believes abuse or neglect has occurred, it shall immediately offer social services to the child who is the subject of the report and his/her family. If, before the investigation is completed, the opinion of the investigators is that assistance of the Tribal law enforcement agency is necessary for the protection of the child or other children under the same care, the Tribal law enforcement agency and the Tribal prosecutor shall be notified. If immediate removal is necessary to protect the child or other children under

the same case from further abuse, the child or children may be placed in protective custody in accordance with Tribal law.

6. If a local law enforcement agency receives a report of known or suspected child abuse or neglect, it shall first attempt to contact the Tribal department in order to refer the case for investigation. If the local law enforcement agency is unable to contact the Tribal department, it shall make a complete investigation and may request the Tribal prosecutor to institute appropriate legal proceedings on behalf of the subject child or other children under the same care. The Tribal law enforcement agency, upon receipt of a report and upon completion of any investigation it may undertake, shall immediately forward a summary of the investigatory data plus all relevant documents to the Tribal department. [TCR 86-79]

4-509 Child protection teams. It is the intent of this legislation to encourage the creation of one or more child protection teams. The Chief Judge of the Court shall have responsibility for inaugurating the child protection team.

1. The child protection team shall review the files and other records of the case, including the diagnostic, prognostic, and treatment services being offered to the family in connection with the reported abuse.
2. At each meeting, each member of the child protection team shall be provided with all available records and report on each case to be considered.
3. The public, in a non-participatory role, shall be permitted to attend those portions of child protection team meetings concerned with mandatory team discussions of public and private agencies' responses to each report of child abuse and neglect being considered by the team, as well as the team's recommendations related to pubic-agency responses. In all its public discussions, the team shall not publicly disclose the names or addresses and identifying information relating to the children, families or informants in those cases.
4. At the beginning of the public discussion of each case, a designated team member shall publicly state the following information, arrived at by consensus of the team: Whether the case involves mild, moderate, or severe abuse or neglect or no abuse or neglect; whether the child is an infant, a toddler, a preschool or school-aged child, or a teenager and the sex of the child; the date of the initial report and the specific agency to which the report was made; and the dates of subsequent reports to specific social service agencies, law enforcement agencies, or other agencies. In no case shall the informant's name or other identifying information about the informant be publicly revealed. The team shall also state publicly whether the child was hospitalized and whether the child's medical records were checked.
5. At this public session, and immediately after any executive sessions at which a child abuse or neglect case is discussed, the child protection team shall publicly review the responses of public and private agencies to each report of child abuse or neglect, shall publicly state whether such responses were timely, adequate, and in compliance with provisions of this Article, and shall publicly report non-identifying information relating to any inadequate responses, specifically indicating the public and private agencies involved.
6. After this mandatory public discussion to consider identifying details go into executive session upon the vote of a majority of the team of the case being discussed, to discuss confidential reports, including but not limited to the reports of physicians and psychiatrist, or when the members of the team desire to act as an advisory body concerning the details of treatment or evaluation programs. The team shall state publicly, before going into executive session, its reasons for doing so. Any recommendation based on information presented in the executive sessions shall be discussed and formulated at the immediately succeeding public session of the team, without publicly revealing identifying details of the case.

7. At the team's next regularly scheduled meeting, or at the earliest possible time, the team shall publicly report whether the lapses and inadequacies discovered earlier in the child protection system have been corrected.
8. The team shall make a report of its recommendations to the Tribal department with suggestions for further action or stating that the team has no recommendations or suggestions. Tribal and state and federal agencies may cooperate in meeting the requirements of this subsection.
9. Each member of the team shall be appointed by the agency he/she represents, and each team member shall serve at the pleasure of the appointing agency; except that the director of the Tribal department shall appoint the representatives of the lay community, and shall actively recruit all interested individuals and consider their applications for appointment as lay-community representatives on the team.
10. The director of the Tribal department or his/her designee shall be deemed to be the coordinator of the child protection team.
11. The coordinator shall forward a copy of all reports of child abuse to the child protection team. The coordinator shall forward a copy of the investigatory report and all relevant materials to the child protection team as soon as they become available. The child protection team shall meet no later than one week after receipt of a report to evaluate such report of child abuse. The coordinator shall make and complete, within ninety days of receipt of a report initiating an investigation of a case of child abuse, a follow-up report, including services offered and accepted and any recommendations of the child protection team, to the central registry on forms supplied by the Tribal department for that purpose. [TCR 86-79]

4-510 Immunity from liability. Any person participating in good faith in the making of a report or in a judicial proceeding held pursuant to this Title, the taking of color photographs or X-rays, or the placing in temporary custody of a child pursuant to this Article or otherwise performing his/her duties or acting pursuant to this Act shall be immune from any liability, civil or criminal, that otherwise might result by reason of such reporting. For the purpose of any proceedings, civil or criminal, the good faith of any person reporting child abuse, any person taking color photographs or X-rays and any person who has legal authority to place a child in protective custody shall be presumed. [TCR 86-79]

4-511 Child abuse and child neglect diversion program.

1. The Tribal prosecutor, upon recommendation of the Tribal department or any person, may withhold filing a case against any person accused or suspected of child abuse or neglect and refer that person to a non-judicial source of treatment or assistance, upon conditions set forth by the Tribal department and the Tribal prosecutor. If a person is so diverted from the criminal justice system, the Tribal prosecutor shall not file charges in connection with the case if the person participates to the satisfaction of the Tribal department and the Tribal prosecutor in the diversion program offered.
2. The initial diversion shall be for a period not to exceed two years. This diversion period may be extended for one additional one year period by the Tribal prosecutor if necessary. Decisions regarding extending diversion time periods shall be made following review of the person diverted by the Tribal prosecutor and the Tribal department.
3. If the person diverted successfully completes the diversion program to the satisfaction of the Tribal department and the Tribal prosecutor, he/she shall be released from the terms and conditions of the program, and no criminal filing of the case shall be made against him/her.
4. Participation by a person accused or suspected of child abuse in any diversion program shall be voluntary. [TCR 86-79]

4-512 Evidence not privileged. The privileged communication between patient and physician and between husband and wife shall not be a ground for excluding evidence in any judicial proceedings resulting from a report pursuant to this Article. [TCR 86-79]

4-513 Court proceedings; guardian ad litem.

1. In any proceeding initiated pursuant to this Section, the Court shall name as respondents all persons alleged by the petition to be the legal or actual physical custodians or guardian of the child. In every such case, the responsible person shall be named as respondent. Summons shall be issued for all named respondents.
2. The Court in every case filed under this Article shall appoint, at no fee, a guardian ad litem at the first appearance of the case in Court. The guardian ad litem shall be provided with all reports relevant to the case made to or by any agency or person pursuant to this Title and with reports of any examination of the responsible person made pursuant to this Section. The Court or the social services worker assigned to the case shall advise the guardian ad litem of significant developments in the case, particularly any further abuse or neglect of the child involved. The guardian ad litem shall be charged in general with the representation of the child's interest. To that end, he/she shall make such further investigations as he/she deems necessary to ascertain the facts, talk with or observe the child involved, interview witnesses in both the adjudicatory and dispositional hearings and may introduce and examine his/her own witnesses, make recommendations to the Court concerning the child's welfare, and participate further in the proceedings to the degree necessary to adequately represent the child.
3. If the prayer of the petition is granted, the costs of this proceeding, including guardian ad litem and expert witness fees, may be charged by the Court against the respondent.
4. It is not necessary that the guardian ad litem be an attorney. [TCR 86-79]

4-514 Central registry.

1. There shall be established a central registry of child protection in the Tribal department for the purpose of maintaining a registry of information concerning each case of child abuse reported under this Title.
2. The central registry shall contain but not be limited to:
   A. All information in any written report received under this Title;
   B. Record of the final disposition of the report, including services offered and services accepted;
   C. The plan for rehabilitative treatment;
   D. The name and identifying data, date, and circumstance of any person requesting or receiving information from the central registry;
   E. Any other information which might be helpful in furthering the purposes of this Title.
3. The director of the Tribal department shall appoint a director of the central registry who shall have charge of said registry. Subject to available appropriations, the director shall equip his/her office so that data in the central registry may be made available during non-business hours through the use of computer technology. Such computerized records shall be password coded and only department personnel, judges, justices and law enforcement personnel shall have access to the password.
4. After a child who is the subject of a report reaches the age of nineteen years, access to his/her record under this Section shall be permitted only if a sibling or offspring of such child is before any person mentioned in Section 4-503(2) and is a suspected victim of child abuse. The amount and type of information released shall depend upon the source of the report and shall be determined by regulations established by the director of the central registry. However, under no circumstances shall the information be released unless the person requesting such information is

entitled thereto as confirmed by the director of the central registry and the information released states whether or not the report is founded or unfounded. A person given access to the names or other information identifying the subject of a report shall not divulge or make public any identifying information unless he/she is a Tribal prosecutor or other law enforcement official and the purpose is to initiate Court action or unless he/she is the subject of a report.

5. Unless an investigation of a report conducted pursuant to this Article determines there is some credible evidence of alleged abuse, all information identifying the subject of the report shall be expunged from the central registry forthwith. The decision to expunge the record shall be made by the director of the central registry based upon the investigation made by the Tribal department or the Tribal law enforcement agency.
6. In all other cases, the record of the reports to the central registry shall be sealed no later than ten years after the child's nineteenth birthday. Once sealed, the record shall not otherwise be available unless the director of the central registry, pursuant to rules promulgated by the department and upon notice to the subject of the report, gives his/her personal approval for an appropriate reason. In any case and at any time, the director may amend, seal, or expunge any record upon good cause shown and notice to the subject of the report.
7. At any time the subject of a report may receive, upon request, a report of all information pertinent to the subject's case contained in the central registry, but the director of the central registry is authorized to prohibit the release of data that would identify the person who made the report or who cooperated in a subsequent investigation which he/she reasonably finds to be detrimental to the safety or interest of such person.
8. At any time subsequent to the completion of the investigation, a subject of the report may request the director to amend, seal, or expunge the record of the report. If the director refuses and does not act within a reasonable time, but in no event later than thirty days after such request, the subject shall have the right to a fair hearing before the Tribal Court to determine whether the record of the report in the central registry should be amended, sealed, or expunged on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with this Article. The Tribal department shall be given notice of the hearing. The burden in such a hearing shall be on the Tribal department. In such hearings the fact that there was such a finding of child abuse or neglect shall be presumptive evidence that the report was substantiated.
9. Written notice of any amendment, sealing, or expungement made pursuant to the provision of this Act shall be given to the subject of such report and to the Tribal department. The latter, upon receipt of such notice, shall take similar action regarding such information in its files.
10. Any person who willfully permits or who encourages the release of data or information contained in the central registry to persons not permitted access to such information by this Article shall be subject to a civil penalty not in excess of five hundred dollars ($500.00) and any actual damages sustained. Persons who willfully permit or who encourage the release of this information may also be charged with a criminal offense.
11. The central registry shall adopt such rules and regulations as may be necessary to encourage cooperation with other tribes or states and the National Center on Child Abuse and Neglect. [TCR 86-79, 15-127]

4-515 Confidentiality of records.

1. Except as provided in this Section, reports of child abuse or neglect and the name and address of any child, family or informant or any other identifying information contained in such reports shall be confidential and shall not be public information.
   A. Disclosure of the name and address of the child and family and other identifying information involved in such reports shall be permitted only when authorized by a court for good cause. Such disclosure shall not be prohibited when there is a death of a suspected victim of child abuse or neglect and the death becomes a matter of public

record, the subject of an arrest by a law enforcement agency, and the subject of the filing of a formal charge by a law enforcement agency.

B. Any person who violates any provision of this subsection (1) shall be subject to a civil penalty of not more than five hundred dollars ($500.00).

2. Only the following persons or agencies shall be given access to child abuse or neglect records and reports:

A. The law enforcement agency or department investigating a report of known or suspected child abuse or neglect or treating a child or family which is the subject of the report;

B. A physician who has before him/her a child whom he/she reasonably suspects to be abused or neglected;

C. An agency having the legal responsibility or authorization to care for, treat, or supervise a child who is the subject of a report or record or a parent, guardian, legal custodian, or other person who is responsible for the child's health or welfare;

D. Any person named in the report or record who was alleged as a child to be abused or neglected or, if the child named in the report or record is a minor or is otherwise incompetent at the time of the request, his/her guardian ad litem;

E. A parent, guardian, legal custodian, or other person responsible for the health or welfare of a child named in a report, with protection for the identity of reporters and other appropriate persons;

F. A court, upon its finding that access to such records may be necessary for determination of an issue before such court, but such access shall be limited to in-camera inspection unless the Court determines that public disclosure of the information contained therein is necessary for the resolution of an issue then pending before it;

G. The central registry of child protection;

H. All members of a child protection team;

1. Such other persons as the Court may determine, for good cause.

2. After a child who is the subject of a report to the central registry reaches the age of nineteen years, access to that report shall be permitted only if a sibling or offspring of such child is before any person mentioned in subsection of this Section and is a suspected victim of child abuse or neglect. The amount and type of information released shall depend upon the source of the report and shall be determined by regulations established by the director of the central registry. However, under no circumstances shall the information be released unless the person requesting such information is entitled thereto as confirmed by the director of the central registry and the information released states whether the report is founded or unfounded. A person giving access to the names or other information identifying the subject of a report shall not divulge or make public any identifying information unless he/she is a prosecuting attorney or other law enforcement official and the purpose is to initiate Court action or unless he/she is the subject of the report. [TCR 86-79, 90-24, 15-127]

TITLE 4
ARTICLE 6
TERMINATION OF PARENTAL RIGHTS

4-601 Motion for termination of parental rights.
4-602 Appointment of counsel.
4-603 No jury trial.
4-604 Abandonment.
4-605 Criteria for termination.
4-606 Standard of proof.
4-607 Voluntary termination of parental rights.
4-608 Interpreter for relinquishment of parental rights and consent to adoption.
4-609 Review of child's disposition following termination of the parent-child legal relationship.
4-610 Expert testimony.
4-611 Effect of decree.
4-612 Appeals.
4-613 Traditional custodians' and grandparents' rights.

4-601 Motion for termination of parental rights.

1. Termination of a parent-child legal relationship shall be considered only after the filing of a written motion alleging the factual grounds for termination, and termination of a parent-child legal relationship shall be considered at a separate hearing following an adjudication of a child as dependent or neglected or in-need-of-care. Such motion shall be filed at least thirty days before such hearing.
2. The Department shall
   A. The PSW will file a petition to terminate parental rights when a child has been in foster care under the Tribe's responsibility for 15 of the most recent 22 months. The petition will be filed by the end of the child's 15th month in foster care using as a start date the day the child entered foster care. Trial home visits or runaway episodes are excluded from the 15 month calculation.
   B. The PSW will file a petition to terminate parental rights within 60 days of a finding by a court of competent jurisdiction that the child is an abandoned infant,
   C. The PSW will file a petition to terminate parental rights when a parent has been convicted of one of the following: a) murder of another child of the parent; b) voluntary manslaughter of another child of the parent; c) aiding, abetting, attempting, conspiring, or soliciting to commit such a murder or such a voluntary manslaughter; or d) a felony assault that results in serious bodily injury to the child or another child of the parent. In these circumstances, the petition to terminate parental rights will be made within 60 days of a determination that reasonable efforts to reunify the child and parent [based on a) through d) above] are not required.

   CFS may elect **not** to file a petition to terminate parental right if at the option of CFS the child is being cared for by a relative; or if CFS has documented in the case plan a compelling reason that termination of parental rights would not be in the child's best interest; or if services deemed necessary to safely return the child to parental care (reasonable efforts) have not been provided.
   [TCR 86-79, 86-109, 15-127]

4-602 Appointment of counsel.

1. After a motion for termination of a parent-child legal relationship is filed pursuant to this Article, the parent or parents shall be advised of the right to counsel, at their own expense, and counsel shall be appointed whenever counsel is available at no fee or whenever the Court fund has sufficient unobligated funds to pay an attorney a maximum of five hundred dollars ($500.00) per case.

2. An attorney**,** who shall be the child's previously appointed guardian ad litem whenever possible, shall be appointed to represent the child's best interest in any hearing determining the involuntary termination of the parent-child legal relationship. Additionally, said attorney shall be experienced, whenever possible, in juvenile law. Such representation shall continue until an appropriate permanent placement of the child is effected or until the Court's jurisdiction is terminated. If a respondent parent is a minor, a guardian ad litem shall be appointed and shall serve in addition to any counsel requested by the parent. [TCR 86-79, 86-109]

4-603 No jury trial. There shall be no right to a jury trial at proceedings held to consider the termination of a parent-child legal relationship. [TCR 86-79, 86-109]

4-604 Abandonment. Before a termination of the parent-child legal relationship based on abandonment can be ordered, the petitioner shall file an affidavit stating what efforts have been made to locate the parent or parents of the child subject to the motion for termination. Such affidavit shall be filed not later than ten days prior to the hearing. [TCR 86-79, 86-109]

4-605 Criteria for termination.

1. The Court may order a termination of the parent-child legal relationship upon the finding of either of the following:
   A. That the child has been abandoned by his/her parent or parents;
   B. That the child is adjudicated dependent or neglected or in-need-of-care and all of the following exist:
      i. That an appropriate treatment plan approved by the Court has not been reasonably complied with by the parent or parents or has not been successful;
      ii. That the parent is unfit;
      iii. That the conduct or condition of the parent or parents is unlikely to change within a reasonable time.
2. In determining unfitness, conduct, or condition, the Court shall find that continuation of the legal relationship between parent and child is likely to result in grave risk of death or serious injury to the child or that the conduct or condition of the parent or parents renders the parent or parents unable or unwilling to give the child reasonable parental care. In making such determinations, the Court shall consider, but not be limited to, the following:
   A. Emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely within a reasonable time to care for the ongoing physical, mental, and emotional needs of the child;
   B. Conduct towards the child of a physically or sexually abusive nature;
   C. History of violent behavior;
   D. A single incident of life-threatening or gravely disabling injury or disfigurement of the child;
   E. Excessive use of intoxicating liquors or narcotics or dangerous drugs which affects the ability to care and provide for the child;
   F. Neglect of the child;
   G. Long-term confinement of the parent;
   H. Injury or death of a sibling due to proven parental abuse or neglect;
   I. Reasonable efforts by child-caring agencies which have been unable to rehabilitate the parent or parents.
3. In considering any of the factors in subsection (2) of this Section in terminating the parent-child legal relationship, the Court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The Court shall review and order, if necessary, an evaluation of the child's physical, mental, and emotional conditions. [TCR 86-79, 86-109]

4-606 Standard of proof. The Court shall order termination of parental rights if it finds by clear and convincing evidence that termination of parental rights and a permanent placement with another person is in the best interest of the child. [TCR 86-79, 86-109]

4-607 Voluntary termination of parental rights. Parental rights may be relinquished voluntarily by a parent in writing, if signed by the parent in the presence and with approval of the Court. Relinquishment shall not be accepted or acknowledged by the Court prior to ten days after birth of the child. An interpreter shall be provided if required by the Court pursuant to Section 4-608. [TCR 86-79, 86-109]

4-608 Interpreter for relinquishment of parental rights and consent to adoption. Parents who want to relinquish their parental rights or to consent to adoption shall be provided an interpreter if they do not understand English. [TCR 86-79, 86-109]

4-609 Review of child's disposition following termination of the parent-child legal relationship.

1. The Court, at the conclusion of a hearing in which it ordered the termination of a parent-child legal relationship, shall order that a review hearing be held not later than ninety days following the date of the termination. At such hearing, the agency or individual vested with custody of the child shall report to the Court what disposition of the child, if any, has occurred, and the guardian ad litem shall submit a written report with recommendations to the Court, based upon an independent investigation, for the best disposition of the child.
2. If no adoption has taken place within a reasonable time and the Court determines that adoption is not immediately feasible or appropriate, the Court may order that provisions be made immediately for long-term foster placement of the child. [TCR 86-79]

4-610 Expert testimony.

1. Subject to the availability of funds, an indigent parent has the right to have appointed one expert witness of his/her own choosing whose reasonable fees and expenses, subject to the Court's prior review and approval, shall be paid from the Court funds.
2. All ordered evaluations shall be made available to counsel at least fifteen days prior to the hearing. [TCR 86-79]

4-611 Effect of decree.

1. An order for the termination of the parent-child legal relationships divests the child and the parent of all legal rights, powers, privileges, immunities, duties, and obligations with respect to each other, except for the right of the child to inherit from the parent.
2. No order or decree entered pursuant to this Article shall disentitle a child to any benefit due him/her from any third person, including, but not limited to, any Indian tribe, any agency, any State, or the United States.
3. After the termination of a parent-child legal relationship, the former parent is not entitled to any notice of proceedings for the adoption of the child by another, nor has he/she any right to object to the adoption or to otherwise participate in such proceedings. [TCR 86-79]

4-612 Appeals.

1. Whenever an appeal is made concerning termination of parental rights, an indigent parent, upon request, subject to the availability of funds, may be provided a transcript of the trial proceeding for the appeal at the expense of the Tribe to be paid from the Court fund.

2. Appeals shall be made pursuant to the provisions of the appeals Article of this Code. [TCR 86-79]

4-613 Traditional custodians' and grandparents' rights.

1. No dispositional order or decree including termination of parental rights and adoption shall divest the child's traditional custodians or grandparents of their right to reasonable visitation with the child and their duty to provide instruction and training to the child regarding Tribal customs and traditions or their duty to provide the necessities of life for the child should the parents be unable to do so, unless those rights and duties have been extinguished in a proceeding in which the individual was a party, provided, that adoptive traditional custodians shall also succeed to these rights and duties.
2. The rights and duties of the traditional custodians and grandparents may be enforced by Court order whenever it appears in the child's best interest to do so, provided that all interested parties shall be given notice and an opportunity to be heard. [TCR 86-79]

TITLE 4
ARTICLE 7
ADOPTIONS

4-701 Jurisdiction over adoptions.
4-702 Purpose of adoptions.
4-703 Types of adoptions.
4-704 In-camera determination of enrollment eligibility.
4-705 Eligibility for statutory adoption.
4-706 Eligibility to adopt by statutory process.
4-707 Consent to statutory adoption.
4-708 Voluntary relinquishment.
4-709 When consent of parents unnecessary.
4-710 Notice of hearing for adoption without consent.
4-711 Consent of child.
4-712 Petition.
4-713 Investigation.
4-714 Adoption hearing.
4-715 Report and final decree of adoption.
4-716 Contents of adoption order.
4-717 Effect of final decree of statutory adoption.
4-718 Records and hearings confidential.
4-719 Certificates of adoption.
4-720 Foreign decree.
4-721 Adoption of adults.
4-722 Appeals.
4-723 Customary Adoptions.

4-701 Jurisdiction over adoptions.

1. Except as otherwise provided by law, the juvenile division of the Tribal Court shall have exclusive jurisdiction regarding the adoption of any child who resides or is domiciled within the jurisdiction of the Court, is unmarried, less than nineteen years of age, and either:
   A. Is a member of an Indian tribe; or
   B. Is eligible for membership in an Indian tribe, and is the biological child of a member of an Indian tribe; or
   C. Whose case has been transferred to the juvenile division of the Tribal Court from the courts of a state or tribe which has assumed jurisdiction over said child;

   and the adoption of any adult Indian who resides or is domiciled within the jurisdiction of the Court.
2. The juvenile division of the Tribal Court shall have concurrent jurisdiction with the courts of any other sovereign having lawful authority regarding the adoption by or of any other child or adult who is:
   A. A bona fide resident of or domiciled within the jurisdiction of the Court; or
   B. Between two adults who submit to the jurisdiction of the Court regardless of residence or domicile; or
   C. A member of the Tribe. [TCR 86-79, 90-24, 15-127]

4-702 Purpose of adoptions. The purpose of an adoption is to establish a formal and legal family relationship between two or more persons which after adoption, shall exist as if the parties were born into the adoptive relationship by blood. Adoptions pursuant to this Act shall be so recognized by every agency and level of the government except in eligibility for enrollment determinations which shall continue to be based upon biological parentage. [TCR 86-79]

4-703 Types of adoptions. There shall be three types of adoptions recognized by this Tribe, namely:

1. Statutory adoptions under Tribal law entered into pursuant to Article 7 of this Title.
2. Statutory adoptions under the laws of some other tribe, state, or nation having jurisdiction over the parties and the subject matter.

3. Traditional adoptions which may be for the purpose of establishing any traditional allowed family relationship between any persons, and which shall be governed by Section 4-723 of this Code. Unless otherwise specifically provided by Tribal statute, traditional adoptions create a particular stated family relationship between persons for all purposes other than enrollment and the probate of decedents' estates. [TCR 86-79, 15-127]

4-704 In-camera determination of enrollment eligibility. Whenever a parent, whether biological or adoptive, has expressed a desire that the name of the parent or the original or adoptive name of the child and the child's relationship to themselves or others remain confidential, and a question arises as to the eligibility of the child for enrollment as a citizen and member of the Tribe, the Court is authorized to receive from any source such information as may be necessary for a determination of the eligibility of such child for enrollment, to review such information in-camera, and to enter its order declaring whether or not the child is eligible for enrollment and the child's blood quantum or other necessary non-identifying enrollment eligibility criteria. In doing so, the Court shall be provided with a complete Tribal roll for the necessary period(s), and shall seal all records received to maintain the confidentiality of the parties. If the Court determines that such child is eligible for enrollment, it shall enter its order declaring said fact and the Tribal enrollment officers shall accept such order as conclusive proof of the eligibility of the child for enrollment and enroll the child accordingly. If the Court determines that such child is not eligible for enrollment, it shall enter its order accordingly, and the Tribal enrollment officers shall accept such order as proof of the ineligibility of said child and refuse to enroll the child unless other or further qualifications for enrollment are shown. [TCR 86-79]

4-705 Eligibility for statutory adoption. Every child within the jurisdiction of the juvenile division of the Tribal Court at the time a petition for adoption is filed, may be adopted subject to the terms and conditions of this Article. [TCR 86-79]

4-706 Eligibility to adopt by statutory process. The following persons are eligible to adopt a child pursuant to this Article, and subject to the placement preferences of this Title:

1. A husband and wife jointly;
2. Either the husband or wife if the other spouse is a parent of the child;
3. An unmarried person who is at least twenty-one years old;
4. A married person who is legally separated from the other spouse and at least twenty-one years old.
5. In the case of a child born out-of-wedlock, his/her unmarried father or mother. [TCR 86-79]

4-707 Consent to statutory adoption.

1. Adoption of a child may be decreed only if consent to such adoption has been executed and filed in the juvenile division of the Tribal Court by:
   A. Both parents, if living, or the surviving parent, unless their parental rights have been terminated by judicial decree, or in the case of divorce, if one parent gets the consent of the other parent an adoption can be heard without termination of parental rights.
   B. A parent less than sixteen years of age may give his/her consent only with the written consent of one of that minor's parents, legal guardian, or a guardian ad litem of the minor parent appointed by the Court.
   C. If both parents be deceased, or if their parental rights have been terminated by judicial decree, then the traditional custodian having physical custody of said child for the preceding six month period, or a person or the executive head of an agency having custody of the child by judicial decree with the specific authority, granted by the Court, to consent to the adoption of the child.

2. Where any parent or Indian custodian voluntarily consents to an adoption, or termination of parental rights, such consent shall not be valid unless executed before a judge of a court of competent jurisdiction and accompanied by the judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The Court shall certify that the parent or Indian custodian either fully understood the explanation in English, or that it was interpreted into a language that the parent or Indian custodian understood.
3. Any consent given prior to or written ten days after the birth of a child shall not be valid.
4. Any consent given for the adoption of, or termination of parental rights to a child may be withdrawn at any time prior to the entry of a final decree of adoption or termination as the case may be and the child shall be returned to the parent. [TCR 86-79]

4-708 Voluntary relinquishment. A parent, legal custodian, traditional custodian, or other guardian of a child may relinquish, subject to the terms of Sections 4-707(2), (3), and (4) of this Article, any rights they may have to the care, custody, and control of a child. A relinquishment shall be made by filing a petition in the juvenile division of the Court with notice to the Tribal department, Tribal prosecutor, traditional custodians, and the parent(s) not a petitioner. The traditional custodians may intervene in said action. The petition may relinquish generally in which case the Court shall assume jurisdiction over the child, or specially to a particular person for adoption. A relinquishment shall be valid only upon approval and decree of the Court. [TCR 86-79]

4-709 When consent of parents unnecessary. Adoption of a child may be decreed without the consent required by Section 4-707 of this Article only if the parents, or the traditional custodians having custody if the parents be deceased, have:

1. Had their parental or custodial rights terminated by a decree of a court of competent jurisdiction; or
2. Been adjudicated incompetent by reason of mental disease, defect, or injury, or by abuse of alcohol or drugs, and it appears by a preponderance of the evidence that such person will be unable to provide the necessary care and control of said child for a significant period of time prior to the child reaching majority; or
3. For a period of twelve (12) months immediately preceding the filing of the petition for adoption, willfully failed, refused, or neglected to provide and contribute to the support of their child either:
   A. In substantial compliance with any decree of a court of competent jurisdiction ordering certain support to be contributed; or
   B. If no Court order has been made ordering certain support, then within their available means through contribution of financial support, physical necessities such as food, clothing, and shelter contributions, or by performing labor or other services for and at the request of the person or agency having custody.
4. Been finally adjudicated guilty of a felony and sentenced to death or a term of imprisonment which is likely to prevent release of the parent for a period such that the parent will be unable to provide the necessary care and control of said child for a significant period of time prior to the child reaching majority. In such cases, it shall not be necessary to obtain the consent of such parent, or to terminate the parental rights of such parent prior to adoption of the child.
   [TCR 86-79]

4-710 Notice of hearing for adoption without consent. Before the Court hears a petition for adoption without the consent of the parents as provided by Section 4-709(l), the person having authority to consent to the adoption, or the person petitioning for the adoption shall file an application for adoption without consent setting out the reason the consent of the other person is not necessary. The application shall be set for hearing at a date and time certain, and the application shall contain the name of the child to be

adopted, the time, date, and place of the hearing, the reason that the child is eligible for adoption without the consent of the parent, guardian, or custodian, and a notice that the adoption may be ordered if the parent, guardian, or custodian does not appear at the hearing and show cause why their consent is necessary. The application and notice shall be served on the parent, guardian, or custodian whose consent is alleged to be unnecessary in the same manner that civil summons is served. The hearing on the application shall be at least twenty-four hours prior to the hearing on the adoption. [TCR 86-79]

4-711 Consent of child. Whenever a child be of sufficient maturity and understanding the Court may, and in every case of a child over ten years of age the Court shall, require the consent of the child, expressed in such form as the Court shall direct, prior to the entry of a decree of adoption. Whenever possible, the Court should interview such child in private concerning the adoption prior to approving the child's consent. [TCR 86-79]

4-712 Petition. The petition shall conform with the requirements of the Rules of Juvenile Procedure. [TCR 86-79]

4-713 Investigation.

1. Upon the filing of a petition for adoption, the Court shall order an investigation to be made:
   A. By the agency having custody or legal guardianship of the child; or
   B. In other cases, by the State, Bureau of Indian Affairs, or Tribal department; or
   C. By a person qualified by training or experience, designated by the Court, and shall further order that a report of such investigation shall be filed with the Court by the designated investigator within the time fixed by the Court and in no event more than sixty days from the issuance of the order for investigation, unless time therefor is extended by the Court.
2. Such investigation shall include the conditions and antecedents of the child for the purpose of determining whether he/she is a proper subject for adoption; appropriate inquiry to determine whether the proposed home is a suitable one for the child; and any other circumstances and conditions which may have bearing on the adoption and of which the Court should have knowledge; and in this entire matter of investigation, the Court is specifically authorized to exercise judicial knowledge.
3. The Court may order agencies named in subsection 1 of this Section located in one or more counties to make separate investigations on separate parts of the inquiry, as may be appropriate.
4. Where the adopting parent is the spouse of parent, or in the event that a report, as outlined above deemed adequate for the purpose by the Court, has been made within the six months next preceding the filing of the petition for adoption, the Court, in its discretion, may waive the making of an investigation and the filing of a report.
5. Upon the filing of the report, the investigator shall serve written notice upon the petitioners that the report has been filed with the Court, provided, that the report shall remain confidential and the contents of the report shall not be divulged to the petitioners except upon the consent of the investigating officer and the Court, and except to the Tribal department and the prosecutor.
   [TCR 86-79]

4-714 Adoption hearing. The adoption hearing shall conform with the requirement as set out in the Rules of Juvenile Procedure. [TCR 86-79]

4-715 Report and final decree of adoption. If the Court does not enter a final decree of adoption at the time of the hearing for adoption, but places the child in the legal custody of the petitioners, within six months after the child has been in the custody of the petitioner, the Court shall request a supplementary written report as to the welfare of the child, the current situation and conditions of the adoptive home and the adoptive parents. If the Court is satisfied that the interests of the child are best served by the proposed

adoption, a final decree of adoption may be entered. No final order shall be entered by the Court unless it appears to the Court that the adoption is in the best interests of the child. In any case where the Court finds that the best interest of the child will not be served by the adoption, a guardian shall be appointed and suitable arrangements for the care of the child shall be made and the Court may request Tribal agencies or federal agencies or other agencies authorized to provide services to assist in the placement and the care of the child. [TCR 86-79]

4-716 Contents of adoption order. The final order of adoption shall include such facts as are necessary to establish that the child is within the jurisdiction of the Court and eligible for adoption and that the adoptive parents and home are adequate and capable for the proper care of the child, as shown by the investigation reports and the findings of the Court upon the evidence adduced at the hearings, the new name of the child, if any, and that the relationship of parent and child exists between the petitioners and the child. [TCR 86-79]

4-717 Effect of final decree of statutory adoption.

1. After a final decree of adoption pursuant to this Article is entered, the relationship of parent and child, and all the rights, duties, and other legal consequences of the natural relation of a child and parent shall thereafter exist between such adopted child, the adopting parents, and the kindred of the adopting parents. The adopted child shall inherit real and personal property from the adopting family and the adopting family shall inherit from the child in accordance with law as if such child were the natural child of the adopting parent(s).
2. After a final decree of adoption pursuant to this Article is entered, the natural parents of the adopted child, unless they are the adoptive parents or the spouse of an adoptive parent, shall be relieved and terminated from all parental rights and responsibilities for said child, including the right to inherit from the child, provided, that the child shall remain eligible to inherit from said natural parents, and retain all rights to membership in the Tribe by virtue of his/her birth to said natural parents.
3. Unless the traditional custodians and grandparents of a child have given their consent to the adoption of the child, or have had their custodial rights terminated in the same manner that a parent consents or has their rights terminated, the Court, at any time within two years after the final decree of adoption or refusal of the adoptive parents to allow visitation, whichever is later, may, upon application of a natural traditional custodian or a natural grandparent, order reasonable visitation rights in favor of said person if the Court deems such visitation in the best interest of the child. The Court may enforce such visitation rights and make orders thereto at any time after timely filing of an application therefor. Notice of such application shall be served upon the adoptive parents as a summons is served. [TCR 86-79]

4-718 Records and hearings confidential. Unless the Court shall otherwise order:

1. All hearings held in proceedings under this Article shall be confidential and shall be held in closed Court without admittance of any person other than the interested parties, including traditional custodians, representatives of the Court, persons whose presence is requested by the parties in private before the Court after the exclusion of all other persons, and the counsel for the parties, traditional custodians, and the Tribal department.
2. All papers, records, and files pertaining to the adoption shall be kept as a permanent record of the Court and withheld from inspection. No person shall have access to such records except:
   A. Upon order of the Court for good cause shown.
   B. Upon the adopted person reaching the age of nineteen, the adopted person may review the records unless the natural parents have by affidavit requested anonymity in which case their names and identifying characteristics, not including Tribal membership and

degree of blood, shall be deleted prior to allowing the adopted person access to the records.

C. The traditional custodians and natural grandparents shall have access to the records unless the natural parents have, by affidavit, requested anonymity, in which case, the names and identifying characteristics shall be deleted prior to allowing them access to the records as in the preceding paragraph. If the adopting parents request anonymity, by affidavit, the traditional custodians, and natural grandparents may have access to the records only by order of the Court for good cause shown, and then only if the Court deems such request in the best interest of the child.

D. For the purpose of obtaining the enrollment of the child with another Indian tribe, the Court may upon request of an enrollment officer of that tribe, certify to that officer pertinent facts to enable that officer to determine the eligibility of the child for membership in that tribe subject to the written guarantee, with an understanding if deemed necessary by the Court, that such facts will remain confidential and be divulged only to those persons who must know the facts to obtain the enrollment of the child. In the alternative, and in cases where the natural or adoptive parents have, by affidavit, requested anonymity, the Court may certify a copy of the record of the case to a judge of the court of the other tribe for an in camera review only, or allow such judge to review the record in the Tribal Court, in camera, for the purpose of said judge certifying to his/her tribe that the child is eligible for membership in that tribe. [TCR 86-79, 15-127]

4-719 Certificates of adoption.

1. For each adoption or annulment of adoption, the Court shall prepare, within thirty days after the decree becomes final, a certificate of such decree on a form furnished by the registrar of vital statistics of the state or other jurisdiction having issued the copies of the petition and decree of adoption, and any other information required by law by the registrar.
2. Such form and certified copies, along with any other pertinent information requested by the jurisdiction having issued the birth certificate, shall be forwarded forthwith to the registrar of vital statistics of the jurisdiction.
3. One certified copy of the form, certificate, petition, and decree of adoption shall be forwarded to the Secretary of the Interior. The material forwarded to the Secretary shall also contain a judge's certificate showing:
   A. The original and adoptive name and tribal affiliation of the child;
   B. The names, addresses, tribal affiliation and degree of blood when known of the biological parents;
   C. The names and addresses of the adoptive parents;
   D. The identity of any agency having files or information relating to the adoptive placement;
   E. Any affidavit of the biological parent requesting that their identity remain confidential. [TCR 86-79]

4-720 Foreign decree. When the relationship of parent and child has been created by a decree of adoption of any court of competent jurisdiction of any other nation, or its political subdivisions having authority to enter such decrees, the rights and obligations of the parties as to matters within the jurisdiction of this Nation shall be determined by the Rules of Civil Procedure as found elsewhere in this Code. [TCR 86-79]

4-721 Adoption of adults.

1. An adult person may be adopted by any other adult person with the consent of the person to be adopted, or his/her guardian, if the Court shall approve, and with the consent of the spouse of the

adopting parent, if any, filed in writing with the Court. The consent of the adopted adult's parents shall not be necessary unless said adult has been adjudicated incompetent, nor shall an investigation be made. Such adoption shall create the relationship of parent and child between the parties, but shall not destroy the parent-child relationship with the biological parents, unless specifically requested by the adopted adult in writing in open Court. Unless so requested, the legal effect of such decree, for all purposes, including inheritance, but not including tribal enrollment eligibility, shall be that the adopted person is the child of both sets of parents equally.

2. Proceedings and records relating to the adoption of an adult shall be open to the public as are the records of other civil cases. [TCR 86-79]

4-722 Appeals. An appeal to the Appeals Court may be taken from any final order, judgment, or decree rendered hereunder by any person aggrieved thereby in the manner provided for civil appeals. [TCR 86-79]

4-723 Customary Adoptions. It is the fundamental belief of the Winnebago Tribe of Nebraska that its children are the sacred responsibility of the Tribe. One of the Tribe's basic inherent sovereign rights is the right to make decisions regarding the best interests of its children including who should provide for the care, custody and control of its children. As an exercise of its inherent sovereignty the Winnebago Tribe of Nebraska has the authority and the jurisdiction to formally delegate the authority to the Tribal Court to adjudicate its own customary practices regarding child rearing and child custody.

1. These provisions governing customary adoptions shall be interpreted liberally to provide what is in the best interest of the child and the Tribe and to provide a sense of permanency and belonging to children throughout their lives and at the same time provide them with knowledge about their unique cultural heritage including their tribal customs, history, language, religion and values.
2. Definitions

   As used in this provision:

   A. "Adoptee" is defined as the individual, child or adult who is adopted or it to be adopted.
   B. "Adoptive Parent" is defined as the person establishing or seeking to establish a permanent parent-child relationship with a child who is not their biological child.
   C. "Best Interests of the Child" is defined as a variety of factors including: the ability of the Tribe and Reservation community to provide for the care of the child; the wishes of the Tribe, parents, party or parties; the preference of the child if the child is of sufficient age to express a preference; the intimacy of the relationship between the parties and the child; the child's adjustment to home, school and tribal community; the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity; the permanence, as a family unit, of the existing or proposed adoptive home; the mental and physical health of all individuals involved; the capacity and disposition of the parties to give the child love, affection, guidance and to continue educating the child in the child's tribal culture and heritage.
   D. "Best Interests of the Tribe" is defined as a variety of factors including but not limited to the ability of the Tribe and its members to provide for the child; the ability of the Tribe and its members to provide for the continuations of the Tribe's culture, language, history, religion, traditions and values through its children if those children are take away and not taught these things throughout their daily lives. The ability of the Tribe to continue as a viable cultural entity will be hindered by the loss of its children. Every child is a gift from the creator and is viewed by the Tribe as crucial to the future of the Tribe as a whole.
   E. "Birth Parent" is defined as the biological parent.
   F. "Customary Adoption" means a traditional tribal practice recognized by the community and Tribe which gives a child a permanent parent-child relationship with someone other than the child's birth parent(s).

G. "Court" means the Winnebago Tribal Court.

H. "Child" is defined as a person under the age of nineteen (19) years of age.

I. "Family Member" is defined as a person related by blood or marriage who maintains some form of significant contact with the child. The term includes spouses, parents, children, siblings, aunts, uncles, grandparents, grandchildren and any other person who might be considered a family member or relative under tribal law or custom.

J. "Final Decree of Customary Adoption" is defined as the final court order which establishes the permanent legal relationship between the child and the adoptive parent(s) and establishes any contact which may be allowed with the biological parent.

K. "Final Order Suspending Parental Rights" means a final order of the court which permanently suspends the rights of a biological parent to provide for the care, custody and control of their child. Said order may establish the parameters of contact between the birth parent and the child is said contact is in the child's best interests.

"Suspension of Parental Rights" is defined as the permanent suspension of the rights of biological parents to provide for the care, custody and control of their child. The suspension of parental rights does not sever or affect in any way a child's relationship to his/her Tribe or any rights of inheritance from the biological parent(s).

L. "Tribe" means the Winnebago Tribe of Nebraska.

3. Rights of Parties

In addition to any other rights afforded under the Indian Civil Rights Act, 25. U.S.C. §1301-03 (1968), as amended or provided within this Code, petitioners and other parties to a customary adoption have the following rights:

A. A biological parent has the right to refuse services provided by any social services agency, however, their refusal to accept services may have a significant impact of their ability to have contact with their child;

B. The petitioner and respondent have the right to have reasonable notice and to attend any hearing arising out of the filing of a petition pursuant to this Code. The biological parents and the petitioner have the right to be represented by counsel at their own expense at all proceedings;

C. The biological parents and petitioner have the right to summon and cross-examine witnesses.

D. The biological parents and the petitioner have the right to seek independent medical, psychological or psychiatric evaluations of the child at their own expense.

4. Petition to Suspend Parental Rights

A. Any adult or agency possessing custody of a minor child may file a petition with the Court seeking an order for the permanent suspension of the parental right of a parent and child. The petition shall contain the following information:

i. The name, address and telephone number of the child's tribe;

ii. The name, address, telephone number and age of the child's parent(s) whose parental rights are to be suspended;

iii. The name, address, and telephone number of the petitioner and the petitioner's relationship, if any, to the child;

iv. The name. address, and telephone number of any other relatives who may have an interest in the care, custody and control of the minor child;

v. A statement as to why an order for the suspension of parental rights of the parent is in the best interests of the child and the child's tribe;

vi. A statement as to the basis for the request for the suspension of parental rights, supported by medical, psychiatric, child protection worker, family member and/or psychological reports or testimony;

vii. A statement that no similar action is pending in a state or other tribal court having jurisdiction over the child.

B. The petitioner shall sign the petition in the presence of the Clerk of Court or a notary public and shall affirm under oath that the contents are true and correct except as to those matters based upon belief and, as to those matters, the petitioner reasonably believes them to be true.

5. Notice of Hearing of Petition to Suspend Parental Rights

A. Upon the filing of a petition seeking an order for the suspension of parental rights, the Court shall schedule a hearing to be held thereon and shall cause written notice of such hearing to be served upon the petitioner; the child's tribe; the child's parent(s); family members; caretaker, if any; and appropriate agencies of the Tribe which may either have an interest in the proceedings or be of assistance to the Court in adjudicating the matter. Such notice shall be served in the manner provided for in the Rules of Civil Procedure.

6. Hearing

A. Attendance at Hearing

i. The parent, family members, agencies and petitioner shall be present at the hearing in person or by telephone unless he or she has waived the right to appear in a notarized writing and filed with the court or unless the parent is unable to attend by reason of a medical condition as evidenced by a written statement from a licensed physician or other appropriate professional.

ii. The petitioner shall be present at the hearing. The petitioner's failure to appear shall be grounds for dismissal of the petition.

iii. The parent(s) named in the petition shall also be present. The parent(s) failure to appear shall not prevent the issuance of an order for suspension of parental rights.

B. Conduct of the Hearing

i. The Court shall inform the parent of their rights under this Code and of the nature and consequences of the proceedings.

ii. The Court shall further inform all other parties of their rights under this Code and pursuant to the Indian Civil Rights Act, including the right to summon and cross-examine witnesses.

iii. The rules of evidence of the Tribal Court shall apply.

iv. The burden of proving the allegations of the petition shall be upon the petitioner and the standard of proof shall be clear and convincing evidence. There shall be a legal presumption of the parent's ability to parent until proven otherwise.

v. The Court may continue the hearing, upon a showing of good cause, at the request of any party to the proceeding and enter such temporary orders, if any, as may be deemed just and reasonable to carry out the purposes of this 4-418.

C. Record of Proceedings

i. In all proceedings the Court shall take and preserve an accurate stenographic or recording of the proceedings.

D. Findings.

i. In all cases, the Court shall make specific written findings of fact, state separately its conclusions of law, and enter an appropriate judgment or order.

ii. The Court may make findings that it is in the child's best interests that a final order suspending the parental rights be entered and the Court shall specify the basis of those findings.

7. Final Order for Suspension of Parental Rights

A. If the Court determines that it is in the best interests of the child and the child's tribe, it shall issue a final order for a suspension of parental rights. Such an order for the suspension of parental rights may include, but is not limited to, the following:

i. A permanent suspension of the parental rights of the parent including the suspension of the right to the care, custody and control of the minor child and allowing the child to be adopted.

ii. A permanent suspension of the right of the parent to have contact with the minor child including contact in person, by mail, by telephone or through third parties or the order may allow for a contact agreement agreed upon by the parties to be ordered by the Court;

iii. Restraining a parent from contacting the minor child, the child's foster parent, the child's adoptive parent and/or the social services agency or agencies possessing information regarding the minor child;

iv. Ordering that the biological parents' obligation to pay child support, except for arrearages, is hereby terminated;

v. Ordering that any prior court order for custody, visitation or contact with the minor child is hereby terminated.

B. Copies of any order for suspension of parental rights shall be served upon the parent and the agency or agencies having legal custody of the child and any other parties as directed by the court.

C. Final orders for the suspension of parental rights may be reviewed by the Court at the request of the parent, the agency or agencies possessing custody of the child only if one of the following occurs: the child is not adopted after a period of one (1) year after the entry of the final order suspending parental rights; the adoption of the child fails; or the adoptive parent is deceased. Notice of this review shall be provided to all parties to the hearing at which the final order was issued.

8. Petition for Customary Adoption

A. Any adult may file a petition with the Court seeking an order for the customary adoption of a minor child. The petition shall contain the following information:

i. The name, address and telephone number of the child's tribe;

ii. The name, address, telephone number and age of the child to be adopted;

iii. The name, address, and telephone number of the petitioner and the petitioner's relationship, if any, to the child;

iv. The name, address, and telephone number of any other relatives who may have an interest in the care, custody and control of the minor child;

v. The proposed name of the adoptee after the entry of the final order of customary adoption;

vi. A statement or a copy of the final order suspending the parental rights of the biological parent(s);

vii. A statement as to why a final order for customary adoption is in the best interests of the child and the best interests of the child's tribe;

viii. A statement as to the basis for the customary adoption supported by a home study, medical, psychiatric, child protection worker, family member and/or psychological reports or testimony;

ix. A statement that no similar action is pending in a tribal or state court having jurisdiction over the child.

9. Notice of Hearing on Petition for Customary Adoption

A. Upon the filing of a petition seeking an order for a customary adoption of a minor child, the Court shall schedule a hearing to be held thereon and shall cause written notice of such hearing to be served upon the petitioner; the child's tribe; the child's parent(s); family members; caretaker, if any; and appropriate agencies of the Tribe which may either have an interest in the proceedings or be of assistance to the Court in adjudicating the matter. Such notice shall be served in the manner provided for in 4-119 and if not covered under that provision then in the Rules of Civil Procedure.

10. Hearing on Petition for Customary Adoption

A. Attendance at Hearing

i. The Child who is the subject of a petition for customary adoption, agencies, petitioner and any appropriate family members may be present at the hearing in person or by telephone.

ii. The petitioner shall be present at the hearing. The petitioner's failure to appear shall be grounds for dismissal of the petition.

B. Conduct of the Hearing

i. The court shall inform the parties of their rights under this Code and of the nature and consequences of the proceedings.

ii. The Court shall further inform all other parties of their rights under this Code and pursuant to the Indian Civil Rights Act, including the right to summon and cross-examine witnesses.

iii. The rules of evidence of the Tribal Court shall apply.

iv. The burden of proving the allegations of the petition shall be upon the petitioner and the standard of proof shall be clear and convincing evidence. There shall be a legal presumption of the parent's ability to parent until proven otherwise.

v. The Court may continue the hearing, upon a showing of good cause, at the request of any party to the proceeding and enter such temporary orders, if any, as may be deemed just and reasonable to carry out the purposes of this 4-723.

C. Record of Proceedings

i. In all proceedings the Court shall take and preserve an accurate stenographic or recording of the proceedings.

D. Findings.

i. In all cases, the Court shall make specific written findings of fact, state separately its conclusions of law, and enter an appropriate judgment or order.

ii. The Court may make findings that it is in the child's best interests that a final order suspending the parental rights be entered and the Court shall specify the basis of those findings.

11. Final Order for Customary Adoption

A. If the Court determines that it is in the best interests of the child and the child's tribe, it shall issue a final order for a customary adoption. Such an order may include, but is not limited to the following:

i. A statement that the child has been adopted by the petitioner(s) and that the parent-child bond is hereby established and that all of the rights and responsibilities of that relationship shall exist upon the entry of such a final order;

ii. A notice regarding the new name of the child, if any.

12. Certification of a Customary Adoption

A. A customary adoption, conducted in a manner that is long-established, continued, reasonable process and considered by the people of the Winnebago Tribe of Nebraska to be binding and authentic, based upon the testimony of an expert witness, may be certified by the Winnebago Tribal Court as having the same effect as an adoption order issued by this Court so long as it is in the best interests of the child and the child's tribe.

B. A decree certifying a customary adoption as the same effect as a decree or final order of statutory adoption issued by this Court.

13. Enforcement

A. Final orders for the suspension of parental rights or customary adoption may be enforced by utilizing the contempt power of the Court as set forth in 4-116_of this Code.

14. Appeals

A. Who Can Appeal

i. Any party to a petition to suspend the parental rights of a parent pursuant to this Code may appeal a final Court order.

B. Appeals Procedure

i. All appeals from proceedings under this Code shall be heard pursuant to the Winnebago Tribe of Nebraska Rules of Appellate Procedure, Title 1, Article 3 , except to the extent that any Rule of Procedure is in direct conflict with the express provisions of this Title 4. In such case the provisions of this Title shall apply.

15. Right of Access to Records

A. Any child who has been the subject of a suspension of parental rights proceeding or a customary adoption proceeding has the right, upon reaching the age of majority, to review all of the court's file on these matters subject to redaction of names or the rights of confidentiality of some documents under federal or tribal law.

16. Severability

A. If any provision of this Title, or the application thereof, to any person is held invalid, such invalidity shall not affect the provisions or applications of this Section which can be given effect without the invalid provisions, and to this end the provisions of this Title are declared severable. [TCR 15-127]

TITLE 4
ARTICLE 8
DEVELOPING FOSTER FAMILY HOMES

4-801 Responsibility.
4-802 Licensing foster family homes.
4-803 Basic standard for foster families.
4-804 Basic requirements of foster families.
4-805 Funding for foster children's needs.
4-806 Physical facilities.
4-807 Family composition.
4-808 Personal characteristics.
4-809 Foster parenting abilities.

4-801 Responsibility. It shall be the responsibility of the department to recruit, screen, and license foster family homes for children in accordance -with this Article. [TCR 86-79, 15-127]

4-802 Licensing foster family homes. The department, pursuant to rules not inconsistent with this Act, shall develop and file with the Tribal Court rules for licensing foster family homes and shall have the authority to license foster family homes for the care of children. [TCR 86-79, 15-127]

4-803 Basic standard for foster families. In considering Indian foster parents, the primary consideration should be the parents' capacity to provide love and understanding to a child or children in distress. [TCR 86-79]

4-804 Basic requirements of foster families. Foster families shall meet the following personal criteria:

1. The age of foster parent(s) shall be a consideration only as it affects their physical capability, flexibility, and ability to care for a specific child.
2. A written statement from a physician, regarding the foster parent(s)' and their children's general health, specific illnesses, or disabilities shall be a routine part of the study-evaluation process. Foster parent(s) and all other adults and the children present in the home shall submit a written report verifying that they have taken tuberculin tests and have been found free of disease; other tests may be required as indicated.
3. Physical handicaps of foster parent(s) shall be a consideration only as it affects their ability to provide adequate care to foster children or may affect an individual child's adjustment to the foster family. Cases shall be evaluated on an individual basis with the assistance of a medical consultant when indicated. [TCR 86-79]

4-805 Funding for foster children's needs.

1. If necessary, the department shall secure funding for the needs of children placed in foster care. The rates of funding shall be similar to the rates paid by the State of Nebraska.
2. Employment of foster parents outside the home:
   A. In two parent homes it is preferable, in most instances, that both foster parents shall not be employed outside the home so that one parent is available for the parenting that the child requires. The department shall make decisions regarding such situations on the basis of what is the best interest of the child.
   B. When both parents in a two parent home and when single parents are employed, it is preferable that the home be used for school age children, and only when there are suitable plans (approved by the department) for care and supervision of the child after school and during the summer while parent(s) are at work. [TCR 86-79, 90-24]

4-806 Physical facilities.

1. Physical facilities of the foster family home shall present no hazard to the safety of the foster child.
2. Foster family homes shall meet zoning and housing requirements and/or codes as set by the Tribal Council for individual family dwellings.
3. Physical standards for the foster family home shall be set according to individual living standards for the community in which the foster family home is located; these standards shall be sufficient to assure a degree of comfort which will provide for the well-being of the family and its self-respect in the community in which it resides.
4. Comfort and privacy:
   A. It is preferable that no more than two (2) children share a sleeping room.
   B. The sharing of sleeping rooms by children of opposite sexes is undesirable, especially for foster children who may be experiencing difficulties in the development of their sexual identities, attitudes, and behavior.
   C. Children, other than infants and during emergencies (illness), shall not share sleeping quarters with adults in the household.
   D. Individual space shall be provided for the child's personal possessions.
   E. In all instances when exceptions are necessary, they shall be for children under two years of age or when special cultural, ethnic, or socioeconomic circumstances create a situation in which such exceptions will not be to the detriment of the child.
5. Foster family homes shall be accessible to schools, recreation, churches, other community facilities, and special resources (such as medical clinics) as needed.
6. If the home is otherwise suitable, the foster family shall be provided with all available assistance in meeting the above requirements, standards, and/or codes. [TCR 86-79, 15-127]

4-807 Family composition.

1. Two parents shall be selected in most cases; however, a parent shall be selected when he/she can more effectively fulfill the needs of a particular child.
2. The presence of other children (either the foster parent(s') own or foster), and other adults (i.e., grandparents, aunts, etc.; or unrelated persons) shall be taken into consideration in terms of how they might be affected by or have an effect upon another child.
3. The number and ages of children in a home (both the foster parent(s)' own and foster) shall be considered on an individual basis, taking into account the foster parent(s)' ability to meet the needs of all children present in the home, physical accommodations of the home, and especially the effect which an additional child would have on the family as a unit. It is preferable that:
   A. Foster parent(s) shall care for not more than two infants (under two years of age), including the foster parent(s)' own children.
   B. Foster families should not have more than a total of six children, including foster children and foster parents(s)' own children, in the foster family home. Exceptions shall be made in order to keep siblings together.
   C. The age range of the children in a foster family home shall be similar to that in a "normal" family in order to lessen competition and comparisons.
   D. All placement situations shall consider the effect of having some children in the foster family home whose parent(s) visit them and other children whose parent(s) do not.
   E. A foster family home shall not provide placements for more than one agency at a time without a written agreement delineating the responsibilities of all parties involved. [TCR 86-79, 15-127]

4-808 Personal characteristics. Character and Ability: All adults providing foster care shall:

1. Be mentally and physically able to provide care and supervision;
2. Exercise reasonable judgment in caring for children;
3. Not engage in or have a history of behaviors which would injure or endanger the health or morals of children;
4. Be cleared with the State Central Registry of abused or neglected children and incompetent or disabled adults; and
5. Provide:
   A. Three favorable character references; and
   B. Health reports indicating persons are physically capable of caring for children. After licensing, a new self-certifying health report must be provided annually. [TCR 86-79, 93-74]

4-809 Foster parenting abilities. An assessment of prospective foster parent(s)' parenting ability regarding a specific child shall take into account the following:

1. Motivation for application at this time.
2. Characteristics and number of children best suited to the foster family.
3. Existing family relationships, attitudes, and expectations regarding their own children and parent-child relationships, especially where such existing attitudes and relationships might affect the foster child.
4. Attitudes of significant members of the extended family regarding child placement.
5. Ability to accept and love child as he/she is.
6. Capacity to absorb the child into family life functioning without undue disruption.
7. Capacity of parent(s) to provide for foster child's needs while giving proper consideration to their own children.
8. Own children's attitudes towards accepting foster child.
9. Realistic assessment of positive and negative aspects of foster parenthood.
10. Personal characteristics necessary to provide continuity of care throughout child's need for placement.
11. Flexibility to meet challenging needs over the course of placement.
12. Ability to accept child's relationship with own parent(s).
13. Ability to relate to neglecting and abusing natural parent(s).
14. Special ability to care for children with special needs (physical handicaps, emotional disturbances, etc.).
15. Knowledge of or ability to recognize areas in which ongoing social work assistance may be needed.
16. Ability to help a child return home or be placed for adoption and gain satisfaction from the experience. [TCR 86-79]

TITLE 4
ARTICLE 9
INCOME WITHHOLDING FOR CHILD SUPPORT ACT
(Repealed 2008) [TCR 08-79]

TITLE 4
ARTICLE 10
RULES OF JUVENILE PROCEDURE

Rule 1 Scope.
Rule 2 Purpose and construction.
Rule 3 Attorney or advocate of record.
Rule 4 Notice.
Rule 5 Service of summons.
Rule 6 Summons form.
Rule 7 When summons unnecessary.
Rule 8 Additional parties to be summoned.
Rule 9 Failure to appear.
Rule 10 Petition contents.
Rule 11 Petition form.
Rule 12 Adoption petition.
Rule 13 Juvenile offender commencement of action petition.
Rule 14 Responsive pleadings and motions.
Rule 15 Parties.
Rule 16 Discovery.
Rule 17 Pre-trial conference.
Rule 18 Emergency orders.
Rule 19 Hearings.
Rule 20 Adoption hearing.
Rule 21 Dependency and neglect and child-in-need-of–care dispositional hearing.
Rule 22 Jury Trial.
Rule 23 Termination of parental rights hearing.
Rule 24 Record of proceedings.
Rule 25 Motions for a new trial or rehearing.
Rule 26 Motions for arrest or modification of judgment.
Rule 27 Shelter and detention.
Rule 28 Disqualification or disability of judge.
Rule 29 Evidence.
Rule 30 Clerical mistakes.
Rule 31 Explanation of rights at first appearance (juvenile offenders); child-in-need-of supervision.
Rule 32 Insanity at time of commission of juvenile offense.
Rule 33 Determination of competency or capacity to stand trial.
Rule 34 Fingerprinting or photographing of minor.
Rule 35 Mental or physical examination.
Rule 36 Probation revocation hearing.
Rule 37 Dispositional hearing.
Rule 38 Appeals.
Rule 39 Stay pending appeal

Rule 1 SCOPE. These Rules govern proceedings brought in the Juvenile Court of the Winnebago Tribe of Nebraska under Winnebago Tribal Code Title 4. These proceedings are civil in nature and where not governed by the procedures set forth in Title IV or these Rules, shall be conducted according to the Winnebago Rules of Civil Procedure. [TCR 86-79]

Rule 2 PURPOSE AND CONSTRUCTION. These Rules are intended to provide for the just determination of juvenile proceedings. They shall be construed to secure simplicity in procedure and fairness in administration. [TCR 86-79]

Rule 3 ATTORNEY OR ADVOCATE OF RECORD.

a. An attorney or advocate shall be deemed of record when he/she appears personally before the Court, files a written entry of appearance or other pleading, or has been appointed by the Court, in any particular matter.
b. The Court clerk shall notify an attorney or advocate appointed by the Court. A written notation of appointment shall appear in the file. [TCR 86-79]

Rule 4 NOTICE.

a. Any written motions or other pleadings filed by any party after the issuance of the summons and filing of the petition, except those that can be heard ex parte, shall be served together with the notice of the application to set the same for hearing upon each of the parties affected thereby. Service shall be made in accordance with the Winnebago Rules of Civil Procedure and notice of the application to set the same for hearing shall be served not later than twenty-four hours before the time specified in the notice.

b. Notice of the time, date, and place of any further proceedings, including continuance and adjournments, shall be either given in Court or mailed to each party by the Court. [TCR 86-79]

Rule 5 SERVICE OF SUMMONS.

a. Summons shall be served personally or by certified mail, return receipt requested.

b. If the parties, guardian, or other legal custodian of the child required to be summoned cannot be found within the Tribe's jurisdiction, the fact of the child's presence within the Tribe's jurisdiction shall confer jurisdiction on the Court as to any absent parent, guardian, or legal custodian if due notice has been given in the following manner:

   1. When the residence of the person to be served outside the Tribe's jurisdiction is known, a copy of the summons and petition shall be sent by certified mail with postage prepaid to such person at his/her place of residence with a return receipt requested. Service of summons shall be deemed complete upon return of the requested receipt.

   2. When the person to be served has no residence within the Tribe's jurisdiction and his/her place of residence is not known or when he/she cannot be found within the Tribe's jurisdiction after due diligence, service may be by publication. [TCR 86-79]

Rule 6 SUMMONS FORM. If necessary, the Court clerk shall issue a summons to the respondents and the child as in other civil cases. The summons shall be in substantially the following form:

IN THE TRIBAL COURT
JUVENILE DIVISION
WINNEBAGO TRIBE OF NEBRASKA
WINNEBAGO, NEBRASKA

The Winnebago Tribe of Nebraska
In The Interest of:

Case No JFJ

An Alleged Child,
And Concerning:

Respondent (s).

SUMMONS

THE WINNEBAGO TRIBE OF NEBRASKA to:
Respondents.

YOU ARE HEREBY NOTIFIED, that a petition has been filed in the Juvenile Court alleging that the above named _____is a (delinquent) (deprived or neglected or in-need-of-care) child (in-need-of-supervision) and that as the (parent) (guardian) (legal custodian) of said child you have been named as the Respondent, all as more fully set out in the attached petition.

YOU ARE THEREFORE ORDERED TO APPEAR at the Courtroom of the Tribal Court, Winnebago, Nebraska, on the____ day of _____, at the hour of _____ o'clock a.m./p.m. and to there remain subject to the call of the Court until discharged so that you may be advised of the allegations contained in the petition and may answer that you admit or deny the allegations of the petition.

YOU ARE FURTHER ORDERED, if the above named child is in your physical custody or subject to your control to bring the child to Court with you.

You may seek the advice of an attorney on any matter relating to this action at your own expense.

Court Clerk

(SEAL)
(Return as in other civil cases) [TCR 86-79]

Rule 7 WHEN SUMMONS UNNECESSARY. A summons need not issue or be served upon any respondent who appears voluntarily upon notice or who waives service in writing before a notary public or Court clerk, or who has promised to appear at the hearing in writing upon the release of a child from emergency custody or otherwise, by any such person shall be entitled to a copy of the petition and summons upon request. [TCR 86-79]

Rule 8 ADDITIONAL PARTIES TO BE SUMMONED. The Court on its own motion or on the motion of any party may join as a respondent or require the appearance of any person it deems necessary to the action and authorize the issuance of a summons directed to such person. [TCR 86-79]

Rule 9 FAILURE TO APPEAR.

a. Any person served with a summons who fails to appear without reasonable cause may be proceeded against for contempt of Court and a bench warrant may issue.
b. If after reasonable effort the summons cannot be served or if the welfare of the child requires that he/she be brought immediately into the custody of the Court, a bench warrant may be issued for the parents, guardian, or other legal custodian or for the child, or a search warrant may issue for the child as provided by law.
c. When a parent or other person who signed a written promise to appear and bring the child to Court, or who has waived or acknowledged service fails to appear with the child on the date set by the Court, a bench warrant may be issued for the parent or other person, the child, or both. [TCR 86-79]

Rule 10 PETITION CONTENTS.

a. The petition shall set forth plainly the facts which bring the child within the Court's jurisdiction. If the petition alleges that the child is delinquent, it shall cite the law which the child is alleged to have violated. The petition shall also state the name, age, and residence of the child and the names and residences of his/her parents, guardian, or other legal custodian or of his/her nearest known relative if no parent, guardian, or other legal custodian is known.
b. All petitions filed alleging the dependency or neglect or child-in-need-of-care of a child may include the following statement: "Termination of the parent-child legal relationship is a possible remedy available if this petition is sustained." Unless such statement is contained in the petition, no termination of parental rights can be obtained unless, upon the occurrence of new facts after the filing of the petition an amended petition be filed based upon the new facts and containing the above required statement.
c. If a petition is not filed within seven working days (excluding Saturdays, Sundays, and official Court holidays) after a child is taken into custody and not released, said child shall be released upon order of the Court; provided that upon application to the Court by the Tribal presenting officer or any interested party and for good cause shown, the above time period may, in the discretion of the Court, be extended for a reasonable period of time to be fixed by said Court. [TCR 86-79]

Rule 11 PETITION FORM. The Tribal prosecutor (presenting officer) shall sign and file all child welfare petitions alleging a child to be a juvenile offender, in-need-of-supervision, or deprived, neglected or in-need-of-care. Such petitions and all subsequent Court documents in such proceedings shall contain a heading and title in substantially the following form:

IN THE TRIBAL COURT
JUVENILE DIVISION
WINNEBAGO TRIBE OF NEBRASKA
WINNEBAGO, NEBRASKA

The Winnebago Tribe of Nebraska
In The Interest Of

CASE NO JFJ-

An Alleged Child,
And Concerning PETITION

Respondents.

a. The petition shall set forth plainly the facts which bring the child within the Court's jurisdiction. [TCR 86-79]

Rule 12 ADOPTION PETITION. A petition for adoption shall be filed in duplicate, verified by the petitioners, and shall specifically state:

a. The full names, ages, and places of residence of the petitioners, and, if married, the place and date of their marriage.
b. Their relationship with the child, if any, and their Tribal affiliation by blood and membership, if any.
c. When and from whom the petitioners acquired or intend to acquire physical custody of the child.
d. The names of the child's biological parents and their Tribal affiliation by blood and membership, including Tribal roll numbers, if known.
e. The date and place of birth of the child including the jurisdiction issuing the birth certificate for said child, the child's sex, race, and Tribal affiliation by blood and membership, including Tribal roll number, if known.
f. The name used for the child in the proceeding, and, if a change in name is desired, the new name.
g. That it is the desire of the petitioners that the relationship of parent and child be established between them and the child.
h. A full description and statement of the value of all property owned or possessed by the child.
i. The facts, if any, which excuse the consent of the parents or either of them to the adoption.
j. Any required consents to the adoption may be attached to the petition, or filed with the Court prior to entry of a decree of adoption.
k. The facts which bring the child within the jurisdiction of the Court. [TCR 86-79]

Rule 13 JUVENILE OFFENDER COMMENCEMENT OF ACTION PETITION.

a. Except as otherwise provided in paragraph (b) of this rule, proceedings against alleged juvenile offenders shall be commenced by the filing of a petition. A petition may be filed by a person who has knowledge of the facts alleged or by the prosecutor. The complaint shall be signed by the complainant or the prosecutor. The complaint shall contain:
    1. A citation to the specific statutory provisions of this Title which gives the Winnebago Juvenile Court jurisdiction of the proceedings; and
    2. A citation to the Tribal Code provision which the minor is alleged to have violated; and

3. The name, age and address of the minor who is the subject of the complaint, if known; and
4. A plain and concise statement of the facts upon which the allegations are based, including the date, time, and location at which the alleged facts occurred.

b. As an alternative to filing a petition, the Juvenile Court may, with the assistance of the Child and Family counselor or other designated individuals make such non-judicial adjustment of the case as is practicable without a petition and proceedings thereunder. Such adjustments shall be made only in cases in which the facts admit and establish prima facie jurisdiction in the Court. Efforts to effect a non-judicial adjustment may not extend for a period of more than two months without leave of the Juvenile Court judge who may extend the period for an additional two (2) months. [TCR 86-79]

Rule 14 RESPONSIVE PLEADINGS AND MOTIONS.

a. No responsive pleadings are required, nor is it necessary to deny any allegations of the petition except jurisdictional matters of age and residence of the child which shall be deemed admitted unless specifically denied.
b. Any defense or objection which is capable of determination without trial of the general issues may be raised by motion.
c. Defenses and objections based on defects in the institution of the action or in the petition, other than it fails to show jurisdiction in the Court, shall be raised only by motion filed prior to the entry of an admission or denial of the allegations of the petition. Failure thus to present any such defense or objection constitutes a waiver, but the Court for good cause shown may grant relief from the waiver. Lack of jurisdiction shall be noticed by the Court at any time during the proceedings.
d. All motions shall be in writing and signed by the moving party or his/her counsel, except those made orally by leave of Court.
e. Motions for new trial or rehearing or for arrest or modification of judgment shall be made within ten days of entry of the order of adjudication. [TCR 86-79]

Rule 15 PARTIES.

a. Juvenile Offender. In proceedings on petitions alleging a minor to be a juvenile offender, the parties to the action are the minor and the Tribe.
b. Minor-in-Need-of-Care or Neglected or Dependent and Termination of Parental Rights. In proceedings on petitions alleging a minor to be a minor-in-need-of-care or a neglected or dependent child, the parties to the action are the parents, guardian, custodian, the Tribe and the minor.
c. Adoption. In proceedings on petitions to adopt, the parties are the prospective parents, the Tribe, and the minor.
d. Guardian ad litem. In proceedings where the Court has appointed a guardian ad item, he/she shall become a party.
e. Intervention. Upon written motion, the Court may permit a person to intervene and become a party to the action as follows:
    1. The parent, guardian, or custodian may be permitted to intervene in juvenile offender proceedings;
    2. The parent, guardian, or custodian who is not alleged to have committed the offense against the minor may be permitted to intervene in minor-in-need-of-care or neglect or dependency or termination proceedings. [TCR 86-79]

Rule 16 DISCOVERY.

a. Mandatory Disclosures. Subject to the provisions of subsection (g) of this Rule, the Tribal presenting officer, upon request of the attorney or advocate for the respondents and child, shall disclose to counsel for the respondents and child:
   1. The names and addresses of persons whom the Tribal presenting officer intends to call as witnesses at the hearing or trial, together with their relevant written or recorded statements;
   2. Any written reports or statements of experts made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons;
   3. Any books, papers, documents, photographs, or tangible objects, which the Tribal presenting officer intends to use in the hearing or trial; and
   4. Any record of prior felony convictions of persons whom the tribal presenting officer intends to call as witnesses at the hearing or trial.

b. Discretionary Disclosures. The **C**ourt in its discretion may require disclosure to counsel for the respondents or child of relevant material and information upon a showing of materiality to the preparations of the defense, and if the request is reasonable. The Court shall issue suitable subpoenas or orders to cause such material or information to be made available to counsel for respondents and child.

c. Matters Not Subject to Disclosure. Disclosure shall not be required of legal research or of records, correspondence, reports, or memoranda conclusions of the Tribal presenting officer or members of his/her legal staff.

d. Disclosure by Counsel for Respondents and Child. Subject to the limitations contained in the Indian Civil Rights Act of 1968, the trial Court may require that the Tribal presenting officer be informed of the nature of any defense which counsel for the respondents and child intends to use at the trial and the names and address of persons whom counsel for the respondents and child intends to call as witnesses in support thereof. Upon receipt of the information required by this subsection, the Tribal presenting officer shall notify counsel for the respondents and child of any additional witnesses which he/she intends to call to rebut such defense within a reasonable time before trial after their identity becomes known.

e. Continuing Duty to Disclose. If, subsequent to compliance with these Rules or orders pursuant thereto, a party discovers additional material or information which is subject to disclosure, he/she shall promptly notify the other party or his/her counsel of the existence of such additional material.

f. Custody of Materials. Any material furnished to an attorney or advocate pursuant to these Rules shall remain in his/her exclusive custody or be used only for the purposes of conducting his/her side of the case, and shall be subject to such other terms and conditions as the Court may provide.

g. Protective Orders. When some parts of certain material are discoverable under the provisions of these Rules, and other parts are not discoverable, the non-discoverable material shall be excised and shall be sealed and preserved in the records of the Court and the remainder shall be made available in accordance with the applicable provisions of these Rules.

h. Failure to Comply; Sanctions. Failure to comply with this Rule or with an order brought to the attention of the Court that a party has failed to issue pursuant to this Rule, the Court may order such party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, prohibit the party from introducing in evidence the material not disclosed, or enter such other order as it deems just under the circumstances. [TCR 86-79]

Rule 17 PRE-TRIAL CONFERENCE.

a. Setting Pre-Trial Conference.
   1. If the allegations of a petition filed under Title IV are denied, the Court may on its own motion or at the timely request of either party set a time for and hold a pre-trial conference.
   2. In determining the date for the pre-trial conference, the Court shall allow counsel sufficient time to initiate and complete discovery required or authorized under Rule 16.

b. Pre-Trial Conference.
   1. If a pre-trial conference is held, the Court shall:
      i. Ascertain whether the parties have completed the discovery required by these Rules, and if not, make orders appropriate to expedite completion;
      ii. Ascertain whether there are requests for additional disclosures under these Rules;
      iii. Make rulings on any motions or other requests then pending, and ascertain whether any additional motions or requests will be made at the hearing or continued portions thereof;
      iv. Make rulings on any motions or other requests then pending, and ascertain whether any additional motions or requests will be made at the hearing or continued portions thereof;
      v. Ascertain whether there are any procedural or Indian Civil Rights Act issues which should be considered;
      vi. Ascertain whether the parties have entered into any stipulations concerning issues that will be raised during the trial.
   2. If a pre-trial conference is held, the Court may also consider such matters as will promote a fair and expeditious trial including, but not limited to the following:
      i. Marking for identification various documents and other exhibits of the parties;
      ii. Waivers of foundation to such exhibits;
      iii. Excision of inadmissible portions of otherwise admissible exhibits;
      iv. Severance of co-respondents or allegations for trial;
      v. Seating arrangements for respondents and counsel;
      vi. Availability of jury lists and other information concerning members of the jury panel;
      vii. Conduct at voir dire;
      viii. Number and use of pre-emptory challenges;
      ix. Procedure on objections where there are multiple counsel;
      x. Temporary absence of counsel during trial.
   3. Unless the Court otherwise directs, all motions and other requests prior to trial should be presented in writing or orally by leave of Court at the pre-trial conference. If discovery, investigation, preparation, or evidentiary hearing is necessary for a fair determination of any issue, the pre-trial conference may be continued until the disposition of such matters.
   4. Any pre-trial motions, request, or issue which is not raised at the pre-trial conference shall be deemed waived unless the Court for good cause shown grants relief from the waiver.
   5. At the conclusion of the pre-trial conference, a memorandum of the matters agreed upon should be signed by counsel, approved by the Court, and filed. Such memorandum shall be binding upon the parties at trial, on appeal, and in post-adjudication proceedings. [TCR 86-79]

Rule 18 EMERGENCY ORDERS.

a. On the basis of a report that a child's welfare or safety may be endangered, and if the Court believes action is reasonably necessary, the Court may issue ex parte emergency orders.

b. Where the need for emergency orders arise, and the Court is not in regular session, the judge or referee may give oral or telephone authorization to place a child in protective custody, which authorization shall have the same force and affect as if written, the same to be followed by a written order to enter on the first regular Court day thereafter.
c. If a child has been taken into protective custody by a law enforcement officer or other authorized person, said officer or persons shall promptly notify the Court.
d. Whenever a child is placed in protective custody, as above provided, the Court shall conduct a detention hearing within forty- eight (48) hours, exclusive of Saturdays, Sundays and Court holidays; and the parents, guardian, or other legal custodian, or person with whom the child was residing at the time the child was taken into protective custody, shall be so notified of the time and place of said detention hearing.
e. Whenever, pursuant to such detention hearing, protective custody is continued, the Court shall direct that a petition be filed without undue delay.
f. At any time when a child is subject to an emergency order of Court, as herein provided, and the child requires medical or hospital care, reasonable effort shall be made to notify the parents, guardian, or other legal custodian for the purpose of gaining consent for such care; provided, however, that if such consent cannot be secured and the child's welfare or safety so requires, the Court may authorize needed medical or hospital care. [TCR 86-79]

Rule 19 HEARINGS. Conduct of Hearings:

a. Private and Closed. All hearings shall be separate from other proceedings and shall be private and closed to the public. Only the parties, their attorneys, witnesses, and other persons requested by the parties and approved by the Court may be present at the hearing.
b. Denial of Allegations. If the allegations are denied, the Court shall hear the evidence and decide whether or not the allegations were committed.
c. Admission of Allegations. The Court must find that an admission is voluntarily and knowingly given.
d. Standard of Proof. The standard of proof for a juvenile offender's adjudicatory hearing shall be proof beyond a reasonable doubt, and for all other hearings, the standard of proof shall be clear and convincing evidence.
e. Dismissal or Disposition.
    1. The Court shall dismiss the petition if the allegations are not established by the required standard of proof; or
    2. The Court will proceed to the dispositional hearing if the allegations are established by a valid admission or by the required standard of proof.
f. Postponement (Continuance). On the Court's motion, or the motion of the minor, his/her parents, guardian, custodian, or attorney, the Court may postpone (continue) the hearing for a reasonable time. [TCR 86-79]

Rule 20 ADOPTION HEARING. At any time after the written investigation report has been filed, the Court, upon motion or request of the petitioners, or upon its own motion, shall fix a time for hearing the petition for adoption. The adoptive parent or parents and adoptive child shall appear personally at the hearing. All other persons whose consent is necessary to the adoption and who have not filed their written consents shall be duly notified and may appear or be represented by a member of the Bar of the Court, or by an unpaid personal representative at their request with the approval of the Court. The judge shall examine all persons appearing separately, and if satisfied as to the suitability of the child for adoption, the financial ability and moral and physical fitness and responsibility of the adoptive parents, and that the best interest of the child will be promoted by the adoption, may enter a final decree of adoption, or may place the child in the legal custody of the petitioners for a period of not more than six (6) months prior to entering a final decree of adoption, or if the Court is satisfied that the adoption will

not be in the best interests of the child, the petition shall be denied and the child's guardian instructed to arrange suitable care for the child, and the Court may request the Tribal agencies, federal agencies, or other agencies to provide services to assist in the placement and the care of the child, or in case of need, refer the matter to the department and prosecutor for the purpose of determining whether an involuntary juvenile petition should be filed. [TCR 86-79]

Rule 21 DEPENDENCY AND NEGLECT AND CHILD-IN-NEED-OF-CARE DISPOSITIONAL HEARING.

a. After an order adjudicating a child dependent and/or neglected and/or in-need-of-care, the Court shall make findings relative to disposition and enter its dispositional order. Such dispositions may be made immediately following the adjudicatory hearing, or the Court may continue the cause for a dispositional hearing and give notice of the date, time and place thereof to all parties not in default.

b. At the dispositional hearing, the Court may consider its own record in the subject cause, together with any other of the Court's records relating to the child or respondents.

c. When the Court deems it appropriate, the department may be requested to make a pre-disposition investigation and to submit a case plan which shall recommend:

   1. Whether parental rights of either or both parents should be preserved or terminated, and reasons therefor;
   2. Identification of the causes for the conditions which resulted in the Court's acquired jurisdiction;
   3. If the child is in protective custody, whether such custody should continue or revert to the parents or a parent, and the reasons for such recommendation;
   4. If it is recommended that the child remain in protective custody, the probable duration thereof and whether visits by parents should be allowed and under what conditions;
   5. A course of treatment or counseling to be followed by the parent(s), toward change needed to regain custody if the child is to remain with or is returned to the parent;
   6. A plan for monitoring and evaluating progress toward a conclusion of the proceeding, with a recommended date for termination of the Court's jurisdiction;
   7. Any other recommendations relating to the particular circumstances of the case.

d. Before adopting the dispositional recommendations and case plan, the Court may discuss the same fully with the respondents and their counsel, the child's guardian ad litem and any other interested parties. To the fullest extent possible, such discussion should reveal and resolve objections to the proposed plan so that the respondents commit themselves to follow the course of action agreed upon. The Court may designate one agency to be responsible for implementing the case plan. Once the dispositional terms are established, the same may be incorporated into the Court's dispositional order.

e. The Court shall review the case initially in six months, and thereafter may at any time review the case. Such review may be by written report; or, on the Court's own initiative, the matter may be set for hearing before the Court.

f. In all cases where the child has been adjudicated neglected or dependent, the Court may consider the financial ability of the parents to pay for, or contribute to, the cost of the child's care and may enter an appropriate order of support. [TCR 86-79]

Rule 22 JURY TRIAL.

a. There shall be no right to a jury trial at proceedings held to consider the termination of parent-child legal relationships, neglect, abuse, dependency, child-in-need-of-care or juvenile offender cases. [TCR 86-79]

Rule 23 TERMINATION OF PARENTAL RIGHTS HEARING. A termination of parental rights hearing shall be held within thirty days of receipt of a petition to terminate. The Court shall conduct the hearing for the purpose of determining whether parental rights should be terminated based upon a showing of:

a. Abandonment of the child.
b. Willful and repeated physical injuries which cause or create a substantial risk of death, disfigurement, or impairment of bodily functions.
c. Willful and repeated acts of sexual abuse.
d. Relinquishment of parental rights acknowledged before the Court. [TCR 86-79]

Rule 24 RECORD OF PROCEEDINGS.

a. A verbatim record shall be taken of all proceedings which might result in deprivation of custody. In all other proceedings such record shall be taken unless waived by the parties and so ordered by the Court.
b. Records of Court proceedings shall be open to inspection by the parents or guardian, attorneys or advocates, and other parties in proceedings before the Court, except as provided in other sections of the Juvenile Code. [TCR 86-79]

Rule 25 MOTIONS FOR A NEW TRIAL OR REHEARING.

a. Motion for new trial or rehearing shall be in writing and shall be made within ten (10) days of entry of the order or decree unless time is enlarged by the Court. It shall state the particulars in which the order or decree is in error and the grounds for such motion.
b. If the child and parent are not represented by counsel, the Court shall specifically inform them of this Rule at the time of entry of the order or decree.
c. The party claiming error in a trial or hearing must move the Court for a new trial. The Court may not dispense with the necessity of filing such a motion but may dispense with oral argument on the motion after it is filed, and only questions presented in such motion will considered by the appellate court on review. [TCR 86-79]

Rule 26 MOTIONS FOR ARREST OR MODIFICATION OF JUDGMENT. All such motions shall be in writing within ten days after entry of judgment or decree, except the motions on grounds of lack of jurisdiction may be made at any time. A motion on grounds of newly discovered evidence shall be made within six months of discovery. [TCR 86-79]

Rule 27 SHELTER AND DETENTION.

a. The Chief Judge of the Juvenile Court shall designate a person or persons as officers of the Court with authority to determine whether a child taken into temporary custody should be released to a parent, guardian, or other legal custodian, or admitted to a shelter facility pending notification to the Court and a detention hearing. Such person or persons may be employees of the judicial department, the department, or other appropriate department of the Tribe.
b. The Court shall maintain control over the admission, length of stay, and release of all children placed in shelter.
c. Shelter in a temporary case shall be in a physically unrestrictive facility, of those children whom the Court has determined must be removed from their homes, but for whom physical restriction is not required.
d. The person or persons designated by the Court pursuant to Section (a) of this Rule should be authorized to release any child for whom it is determined shelter is not necessary to parent,

guardian, or other legal custodian either without restriction, or upon a written promise of such person to whom the child is released to bring the child to the Court at a time set or to be set by the Court. If such person to whom the child is released fails to appear upon notice, a bench warrant may be issued for such person, the child or both. [TCR 86-79]

Rule 28 DISQUALIFICATION OR DISABILITY OF JUDGE. The rules on disqualification or disability of a judge shall be the same as those rules that govern the Tribal Court. [TCR 86-79]

Rule 29 EVIDENCE. Except as otherwise provided by these Rules, the Winnebago Tribal Court Rules of Evidence shall govern all proceedings in the Juvenile Court. [TCR 86-79]

Rule 30 CLERICAL MISTAKES. The Court at any time and after notice may correct clerical mistakes in judgments, orders or other parts of the record, or errors in the record arising from oversight or omission. [TCR 86-79]

Rule 31 EXPLANATION OF RIGHTS AT FIRST APPEARANCE (Juvenile Offenders); CHILD-IN-NEED-OF-SUPERVISION. At his/her first appearance, the respondent shall be informed by the Court of:

a. The allegations against him/her.
b. The right to an attorney at his/her own expense.
c. The right to testify or remain silent and that any statement made by him/her may be used against him/her.
d. The right to cross-examine witnesses.
e. The right to subpoena witnesses on his/her own behalf.
f. The possible consequences if the allegations of the petition are found to be true. [TCR 86-79]

Rule 32 INSANITY AT TIME OF COMMISSION OF JUVENILE OFFENSE.

a. Notice. Notice of the defense of insanity shall be given to the Court within five days after service of the petition.
b. Determination of Insanity. The issue of insanity shall be determined at the time of the adjudicatory hearing. If a determination is made, the petition will be dismissed with prejudice and any proceeding for commitment shall be made pursuant to the Code of Civil Commitment. [TCR 86-79]

Rule 33 DETERMINATION OF COMPETENCY OR CAPACITY TO STAND TRIAL.

a. How Raised. The issue of competency or capacity shall be raised by motion at any stage of the proceedings.
b. Determination. The issue of competency or capacity shall be determined by the Court judge.
c. Finding. If a respondent is found incompetent to stand trial:
    1. Further proceedings are stayed until respondent becomes competent to participate in the proceedings; and
    2. If appropriate, the Court judge may order treatment to enable the respondent to attain competency. [TCR 86-79]

Rule 34 FINGERPRINTING OR PHOTOGRAPHING OF MINOR. The Court may order the fingerprinting or photographing of a minor upon motion of the prosecuting officer if such fingerprinting or photographing is necessary for purposes of identification. [TCR 86-79]

Rule 35 MENTAL OR PHYSICAL EXAMINATION. Upon motion and a showing of good cause, the judge may order a mental or physical examination of a respondent. [TCR 86-79]

Rule 36 PROBATION REVOCATION HEARING. Proceedings to revoke probation shall be conducted in the same manner as juvenile offender proceedings, except that no preliminary inquiry shall be conducted. [TCR 86-79]

Rule 37 DISPOSITIONAL HEARING.

a. Access to Reports. Copies of all social, diagnostic or other pre-dispositional reports ordered by the Court shall be provided to the parties at least one day before the dispositional hearing, and counsel for the parties shall be permitted to subpoena and examine in Court the person who prepared the report.
b. Time Limits. The dispositional hearing shall be held within ten days of the adjudicatory hearing. [TCR 86-79]

Rule 38 APPEALS. An appeal will be from any final order, decree, or judgment entered by the Juvenile Court. Appellate procedure will be governed by the Winnebago Appellate Rules. Initials shall appear on the record on appeal in place of the name of the child and respondents. [TCR 86-79]

Rule 39 STAY PENDING APPEAL.

a. Filing. After notice of appeal is filed with the Tribal Court, a party may request that the judgment be stayed.
b. Form and Content. The form and content shall be that prescribed by the Tribal Court. [TCR 86-79]

TITLE 4
ARTICLE 11
GRANDPARENT RIGHTS
(As adopted August 28, 2015)

4-1101 Purpose.
4-1102 Application.
4-1103 Scope.
4-1104 Grandparent Notification.
4-1105 Grandparent Input.
4-1106 Grandparent Visitation.
4-1107 Change of Grandchild's Domicile; Notice to Grandparent.
4-1108 Emergency Medical Care and Grandparent Medical Consent.
4-1109 Grandparent Medical Consent Authorization Affidavit.

4-1101 Purpose.

The Winnebago Tribe of Nebraska values the elders of our community as they possess the knowledge of tribal history, culture, and traditions that are vital to the Tribe. As such, grandparents play an important role within our tribal structure, as the caretakers of our culture and traditions, to instill those values into the upbringing of their grandchildren. As tribal elders, grandparents are responsible for providing guidance, knowledge, wisdom, and sharing experiences with their grandchildren in order to teach them their roles and responsibilities as tribal members. Therefore, the Winnebago Tribe of Nebraska believes that grandparents should have certain rights in order to effectuate this purpose. [TCR 15-114]

4-1102 Application.

1. The provisions of this Article shall apply to all matters where the Tribal Court has jurisdiction.
2. For purposes of this Article, "grandparent" shall mean the biological or adopted parent of the child's adopted or biological parent. [TCR 15-114]

4-1103 Scope.

1. This Article applies to the rights of grandparents with respect to their grandchildren. The best interest of the child shall be considered and under no circumstance shall grandparent's rights be exercised to the detriment of the relationship between a fit parent and the child. [TCR 15-114]

4-1104 Grandparent Notification.

1. A grandparent shall be notified without unnecessary delay when any of the following occur:
   A. Any custody petition involving the grandchild is filed;
   B. The grandchild is taken into temporary custody pursuant to Section 4-201(1)(B) or 4-201(3) and the Court has been notified; or
   C. An adjudicatory hearing involving the grandchild is scheduled to determine if the grandchild is neglected or dependent or a minor-in-need-of-care.
   D. A dispositional hearing involving the grandchild is scheduled pursuant to Section 4-410.
2. The Court shall provide notification to the grandparent at his/her last known mailing address. [TCR 15-114]

4-1105 Grandparent input. A grandparent shall be permitted to provide input on custody or placement actions involving the grandchild. The Court shall take into consideration grandparent input wherever practicable. [TCR 15-114]

4-1106 Grandparent Visitation.

1. A grandparent may petition the Court for reasonable visitation rights with respect to his/her grandchild under this Section if:
   - A. The marital relationship between the parents of the grandchild has been severed by death, divorce or legal separation;
   - B. In good faith the grandparent believes that ordinary visitation has been unreasonably denied by an intact family.
   - C. The grandparent seeks a modification of a prior court visitation order, for which this court has jurisdiction, because of a material change in circumstance.
   - D. The grandchild becomes subject to the Court's jurisdiction for any reason under Title 4;
   - E. The grandchild is illegitimate and the grandparent is a maternal grandparent of the illegitimate child;
   - F. The grandchild is illegitimate, and the grandparent is a paternal grandparent of the illegitimate grandchild and paternity has been established by a court of competent jurisdiction; or
   - G. A court in another jurisdiction ordered grandparent visitation.
2. There is a rebuttable presumption that a fit parent's decision, with regard to visitation, is in the best interest of the grandchild.
   - A. The court may grant the grandparent reasonable rights of visitation if the court finds that the grandparent has rebutted the presumption by clear and convincing evidence based upon the following:
     - i. That the grandchild will suffer emotional or psychological harm if visitation is not permitted;
     - ii. The grandparent is a fit and proper person to have visitation with the grandchild; and
     - iii. Visitation by the grandparent with the grandchild has been denied or unreasonably limited.
   - B. The court may also consider as elements of rebutting the presumption, if applicable, that:
     - i. The grandparent's child who is the parent of the grandchild has died or has become a noncustodial parent through divorce or legal separation;
     - ii. Visitation arrangements between the grandparent and grandchild were in place prior to filing of the petition;
     - iii. The grandparent has acted as the grandchild's custodian or caregiver, or otherwise has had a substantial relationship with the grandchild;
     - iv. The grandparent had frequent or regular contact with the grandchild for at least twelve (12) consecutive months;
     - v. The grandparent has provided the grandchild with guidance, knowledge, and wisdom relating to tribal history, culture and traditions; or
     - vi. Any other facts that establish that the loss of the relationship between the grandparent and the grandchild is likely to harm the grandchild.
3. If the court finds that the grandparent have successfully rebutted the presumption, then the court shall consider whether it is in the best interests of the grandchild to enter an order for reasonable grandparent visitation with the grandchild. In determining the best interests of the grandchild, the court shall consider all relevant factors, including, but not limited to, the following:
   - A. The love, affection and other emotional ties existing between the grandparent and the grandchild.
   - B. The length and quality of the prior relationship between the grandchild and the grandparent, the role performed by the grandparent in such relationship and the existing emotional ties of the grandchild to the grandparent.
   - C. The mental and physical health of all parties.

D. The wishes and concerns of the grandchild, if age twelve (12) years or older.
E. The effect on the grandchild of hostility between the grandparent and the parent or parents of the grandchild.
F. The willingness of the grandparent, except in the case of abuse or neglect of the grandchild by the parent or parents of the grandchild, to encourage a close relationship between the grandchild and the parent or parents of the grandchild.
G. Any history of physical, emotional or sexual abuse or neglect of any child or grandchild by the parent or parents or grandparent.
H. Whether the parent's decision to deny, or fail to offer, visitation to the grandparent, is related to the grandchild's well-being or is for some other unrelated reason.
I. The willingness of the grandparent to encourage and educate the grandchild regarding tribal history, culture and traditions.
J. Any other factor relevant to the physical and psychological well-being of the grandchild.

4. The Court may order visitation rights to the grandparent if it finds that such an order would be in the best interests of the grandchild. [TCR 15-114]

4-1107 Change of a Grandchild's Domicile; Notice to Grandparent. When a grandparent is granted visitation pursuant to Section 4-1106, and the grandchild's custodian intends to relocate with the intention of changing that grandchild's domicile, the custodian shall:

1. Notify the grandparent of the intent to change the grandchild's domicile at least five (5) days prior to the grandchild's change of domicile;
2. Provide the grandparent with the address and telephone number for the grandchild;
3. Make reasonable arrangements in order for grandparent(s) to exercise their visitation rights; and
4. Send the notice required in this section to the grandparent at his/her last known mailing address on file with the Court and file a copy of the notice with the Court. [TCR 15-114]

4-1108 Emergency Medical Care and Grandparent Medical Consent.

1. Medical, dental, health and hospital services may be rendered to persons of any age without the consent of a parent or legal guardian when, in the physician's judgment, an emergency exists and the person is in immediate need of medical attention and an attempt to secure consent would result in delay of treatment which would increase the risk to the person's life or health.
2. Except as otherwise provided in Section 4-1109(2), if a grandchild is in the care of his/her grandparent who has made reasonable attempts to locate and contact the grandchild's parents, guardian or custodian, but has been unable to do so, the grandparent may obtain authority to consent to necessary medical, psychological, or dental treatment for the grandchild by executing a grandparent medical consent authorization affidavit in accordance with Section 4-1109.
   A. "Necessary" shall mean those medical, psychological, or dental services recommended by a physician that do not qualify as an emergency in need of immediate medical attention.
   B. A grandchild is deemed to be in the care of his/her grandparent if that grandchild is under the supervision of his/her grandparent with his/her parent's knowledge and consent. [TCR 15-114]

4-1109 Grandparent Medical Consent Authorization Affidavit.

1. The grandparent medical consent authorization affidavit must meet the following requirements:
   A. The grandparent's signature must be notarized.
   B. The grandparent who executed the affidavit must file it with the Court not later than five (5) days after its execution.

2. The grandparent may execute a grandparent medical consent authorization affidavit without attempting to locate:
   A. The child's father if paternity has not been established with regard to the child.
   B. If the child is the subject of a custody order, the following parent:
      i. A parent who is prohibited from receiving a notice of relocation; or
      ii. A parent whose parental rights have been terminated.
3. The affidavit does not affect the rights of the child's parents, guardian, or custodian regarding the care, physical custody, and control of the child, and does not give the grandparent legal custody of the child.
4. A person or entity that relies on the affidavit, in good faith, has no obligation to make any further inquiry or investigation.
5. The affidavit terminates on the occurrence of whichever of the following occurs first:
   A. One year elapses following the date the affidavit is notarized;
   B. The parent, guardian, or custodian of the child acts to negate, reverse, or otherwise disapprove an action or decision of the grandparent who signed this affidavit;
   C. The affidavit is terminated by court order;
   D. The death of the child who is the subject of the affidavit; or
   E. The death of the grandparent who executed the affidavit.
6. If the affidavit terminates for any reason other than the death of the grandparent, the grandparent shall, within one week of termination:
   A. Provide written notice to any health care provider or health care facility to which the grandparent provided the affidavit.
   B. Provide written notice to any other person or entity that has an ongoing relationship with the grandparent and the grandchild that would reasonably rely on the affidavit unless notified.
7. The affidavit shall contain the following:
   A. Name, age, date and year of birth, and social security number of the grandchild;
   B. Name, age, date and year of birth, address, and social security number or other identification number of the grandparent; and
   C. A statement that the grandparent has been unable to locate the grandchild's parents.
8. The affidavit shall be permitted to utilize the following format:

   I, _____, was born on [DATE OF BIRTH] and am at least 18 years of age. I reside at: _____. My [DRIVER'S LICENSE / IDENTIFICATION CARD] number is: _____.

   I am the [MATERNAL/PATERNAL] grandparent of _____, who is currently in my care. My grandchild was born on _____ and is _____ years old. My grandchild's social security number is _____.

   Despite having made reasonable attempts, I am:

   _____ Unable to locate or contact the child's parents, or the child's guardian or custodian; or
   _____ Unable to locate or contact one of the child's parents and I am not required to contact the other parent because paternity has not been established; or
   _____ Unable to locate or contact one of the child's parent and I am not required to contact the other parent because there is a custody order regarding the child and one of the following is the case:
      _____ The parent has been prohibited from received notice of a relocation; or
      _____ The parental rights of the parent have been terminated.

I understand that this document does not authorize a child support enforcement agency to redirect child support payments. I further understand that to have an existing child support order modified or a new child support payments. I further understand that to have an existing child support order modified or a new child support order issued administrative or judicial proceedings must be initiated.

I declare that the foregoing is true and correct. Dated this _____ day of _____, ____.

Signed: _____

[TCR 15-114]

TITLE 5
TRIBAL GOVERNMENT

SUMMARY OF CONTENTS

SECTION	ARTICLE-PAGE
1. TABLE OF REVISIONS	ii
2. TABLE OF CONTENTS	iii
3. ARTICLE 1: ENROLLMENT	1-1
4. ARTICLE 2: ELECTIONS	2-1
5. ARTICLE 3: RESERVED	3-1
6. ARTICLE 4: TRIBAL ELECTION PROCEDURES	4-1

TITLE 5
TABLE OF REVISIONS

The following table is included in this title as a guide for determining whether each article properly reflects the current version. This table will be updated with the revision of each article.

Through usage and supplementation, pages in bound titles can be inserted and removed when sections are revised on an article-by-article basis. This table should be placed before the Table of Contents in the title.

The "Article" column lists each article, and the "Section" column lists any corresponding sections that have been revised, in sequence. The "Revised Date" column reflects the effective date of the revision (e.g., "6/20/15"). If an article is not listed in the table, it has not been revised since the December 2015 Winnebago Tribal Code update and distribution.

Article	**Section**	**Revised Date**
2	5-218	8/9/16
4	5-401	8/9/16

TITLE 5
TRIBAL GOVERNMENT

ARTICLE 1
ENROLLMENT
(As amended and restated August 22, 2012)

5-100 Definitions.
5-101 Tribal Enrollment Committee.
5-102 Determination of membership, enrollment.
5-103 Application for membership by member of another tribe.
5-104 Enrollment application; who must submit.
5-105 Filing of enrollment application.
5-106 Enrollment application for minor, incompetent person, some United States Armed Forces members.
5-107 Enrollment application; information and supporting documentation requirements; burden of proof.
5-108 Actions required of the Enrollment Staff.
5-109 Actions required of the TEC.
5-110 Actions required of the Tribal Council.
5-111 Applicants determined ineligible by the TEC.
5-112 Rejection of application by the Tribal Council; membership appeals.
5-113 Distribution of trust assets or other Financial Benefits; appeals.
5-114 Individual folders; contents of individual folder.
5-115 Access to records.
5-116 Updating records.
5-117 Determination of blood quantum.
5-118 Blood quantum corrections; administrative actions; persons found to be ineligible.
5-119 Enrollment of persons without an enrolled parent.
5-120 Relinquishment of an adult.
5-121 Prohibition on relinquishment of a minor.
5-122 False information; fraudulent acts; otherwise ineligible.
5-123 Disenrollment.
5-124 Amendment procedures.
5-125 Tribal Member Identification; Certification of Blood Quantum
5-126 Use of Fingerprint Reader.
5-127 Claiming financial or other benefits on behalf of another tribal member.
5-128 Indian Child Welfare Act (“ICWA”) cases.
5-129 Notices issued to last known address.

TITLE 5
ARTICLE 2
ELECTIONS
(As revised July 22, 2015)

5-201 Eligible voters.
5-202 Election board.
5-203 Notice of election.
5-204 Qualification of candidates.
5-205 Ballots.
5-206 Absentee ballots.
5-207 Conduct of elections.
5-208 Polling place.
5-209 Conduct of election officials.
5-210 Stickers.
5-211 Campaigning.
5-212 Alcohol.
5-213 Loitering.
5-214 Election tampering.
5-215 Alternates or substitution.
5-216 Placement on Primary Election Ballot.
5-217 Absentee Ballots for Primary Election.
5-218 Primary Election.
5-219 Absentee ballots for Regular Election.
5-220 Regular Election.
5-221 Term of office.
5-222 Runoff election.
5-223 Certification and Oath of Office.

TITLE 5
ARTICLE 3

[Reserved]

TITLE 5
ARTICLE 4
TRIBAL ELECTION PROCEDURES

5-400 Definitions.
5-401 Repealed.
5-402 Filing.
5-403 Fees.
5-404 Petition in lieu of fees.

TITLE 5
ARTICLE 1
ENROLLMENT

As amended and restated August 22, 2012
[TCR #10-114; 11-125; 12-127]

5-100 Definitions.
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5-104 Enrollment application; who must submit.
5-105 Filing of enrollment application.
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5-127 Claiming financial or other benefits on behalf of another tribal member.
5-128 Indian Child Welfare Act ("ICWA") cases.
5-129 Notices issued to last known address.

5-100 Definitions.

1. "Applicant" is any person who submits an application for membership in the Winnebago Tribe of Nebraska, prior to approval or denial of the application.

2. "Base Roll" is the 1934 official census roll of the Winnebago Tribe of Nebraska, or the January 1, 1935 supplement thereto.

3. "Burden of Proof" is the responsibility of the applicant to provide all required documentation and sufficient evidence proving eligibility for enrollment in the Winnebago Tribe of Nebraska.

4. "Certificate of Degree of Indian Blood" (CDIB) is the official document issued by a Tribal Enrollment Department or Bureau of Indian Affairs (BIA) stating a tribal member's degree of Indian blood.

5. "Descendant" is a person who directly descends from a person listed on the Base Roll of the Winnebago Tribe.

6. "Disenroll" or "Disenrollment" is the official act of removing a member's name from the Membership Rolls of the Winnebago Tribe of Nebraska by Tribal Council action and without a voluntary request from the member.

7. "Dual Enrollment" is a person enrolled in two (2) or more federally recognized tribes or nations. The Winnebago Tribe of Nebraska prohibits dual enrollment.

8. "Enrollment Department" is the agency of the Winnebago Tribe of Nebraska responsible for the duties set forth in this Article unless this Article specifically provides otherwise.

9. "Enrollment Resolution" is an official Tribal Council resolution granting tribal membership to a person who is eligible for tribal membership and approved for enrollment by the Tribal Council.

10. "Enrollment Staff" is any employee of the Enrollment Department.

11. "Enrollment Specialist" is the person designated by the Tribe to direct the operations of the Enrollment Department.

12. "Financial Benefit" is any monetary or tangible property benefit received by a person as a member of a federally recognized Indian tribe, not including inheritances.

13. "Membership Roll" is the official alphabetical listing of the names of individuals enrolled in the Winnebago Tribe of Nebraska as that listing is maintained by the Enrollment Department.

14. "Relinquish" or "relinquishment" is the official act of removing a member's name from the Membership Roll of the Winnebago Tribe of Nebraska upon the voluntary request of the member.

15. "Tribal Enrollment Committee" or "TEC" is the official body designated by the Tribal Council to provide oversight of all enrollment affairs of the Tribe as set forth in the Tribal Enrollment Code.

16. "Tribal Member" is a person formally recognized as a member of the Winnebago Tribe of Nebraska who possesses at least one-fourth (1/4) degree Indian blood, including Winnebago Indian blood and blood of another federally recognized Indian tribe. [TCR 10-114, 12-127]

5-101 Tribal Enrollment Committee. The Tribal Council shall appoint an enrollment committee consisting of five members and shall establish terms of office for the committee members. The Tribe may hire an Enrollment Specialist or such other persons or employees as necessary to assist with the duties of the Enrollment Department. The TEC shall be responsible for:

1. Establishing enrollment procedures pursuant to this Article, which shall be recorded in a document entitled "Winnebago Tribal Enrollment Department Policies & Procedures."
2. Receiving and evaluating enrollment applications, and submitting recommendations for enrollment action to the Tribal Council.
3. Certifying documents attesting to the eligibility and ineligibility of applicants.
4. Presenting eligible applicants to the Tribal Council for approval of membership and/or adoption.
5. Recommending policy changes to the Tribal Council when necessary.
6. Ensuring the public trust by maintaining confidentiality of enrollment records and guaranteeing equal treatment and due process to all applicants.
7. Maintaining a current and accurate Membership Roll that reflects the addition of new members, the death of all deceased persons with date of death, and the disenrollment or relinquishment of membership with the effective date of such event.

8. Correcting typographical and other clerical errors to maintain the roll as accurately as possible, including but not limited to dates of birth and changes of names and family relationships, provided such corrections are supported by irrefutable proof and further that the Bureau of Indian Affairs shall be notified of such corrections. Any corrections which affect a person's membership status must be submitted to the TEC for review and recommendation to the Tribal Council and shall further be subject to the appeal provisions authorized by this Article.
9. Adding to the Membership Roll the names of any persons whose name appears on the Base Roll. [TCR 10-114, 12-127]

5-102 Determination of membership, enrollment. Pursuant to Article II of the Winnebago Tribal Constitution, the membership of the Winnebago Tribe of Nebraska shall consist of the following:

1. All persons of Indian blood whose names appear, or are entitled to appear, on the April 1, 1934 official census roll of the Winnebago Tribe of Nebraska, or the January 1, 1935, supplement thereto: provided that those persons who possess Winnebago Indian blood and blood of another tribe have not elected to be enrolled with the other tribe; and provided further that those persons of Indian blood of tribes other than Nebraska Winnebago, whose names appear on the basic roll as "N. E." shall not be considered as members of the Winnebago Tribe of Nebraska; and provided further that persons of Winnebago Indian blood after the date of the basic roll and prior to the date of this amendment, may be enrolled if by January 1,1967, they submit to the Tribal Council a request, in writing, accompanied by such evidence as is necessary to determine their qualifications for enrollment; and provided further that any Indian who may be eligible for membership in the Winnebago Tribe of Nebraska, who has received an allotment of land, or received financial benefits as a member of another tribe, shall not be enrolled. *[As changed by Amendment No. I, effective April 18, 1963]*
2. All persons who have been validly adopted as members of the Winnebago Tribe of Nebraska prior to the date of this amendment is approved by the Secretary of the Interior. *[As changed by Amendment No. I, effective April 18, 1963]*
3. All children born to a member of the Winnebago Tribe of Nebraska, provided such children possess at least one-fourth (1/4) degree Indian blood, including both Winnebago Indian blood and blood of another federally recognized Indian tribe. *[As changed by Amendment, effective March 10, 2009 and replacing the prior Subsection (c) modified by Amendment No. I, effective April 18, 1963]*
4. All persons who are descendants of an enrolled Winnebago tribal member and who have one-fourth (1/4) or more degree Indian blood, including both Winnebago Indian blood and blood of another federally recognized Indian tribe who have been enrolled in tribal membership upon approval by majority vote of the tribal membership. *[As changed by Amendment, effective March 10, 2009 and replacing prior Subsection* (d) *added by Amendment No. VIII, effective April l1, 1968]* [TCR 10-114, 12-127]

5-103 Application for membership by member of another tribe. Any person who applies for membership who otherwise qualifies for membership but who has been enrolled as a member of another Indian tribe may be enrolled as a member of the Winnebago Tribe, provided he/she has not received a Financial Benefit as a member of another tribe (inherited interests of land or money shall not be considered financial benefits); and provided further that he/she relinquishes in writing his/her membership in the other Indian tribe; and provided further that such applicant is admitted to membership by Tribal Council resolution. Any person who repays or returns the full value of any Financial Benefit may be deemed by the TEC to have received no Financial Benefit for enrollment purposes. Any member of the Winnebago Tribe who subsequently becomes a member of another tribe and who shares in any benefits of land or money as a member of such tribe shall be disenrolled. However, any member of the Winnebago Tribe who subsequently becomes a member of another tribe but has not shared in any benefits from that

tribe shall be given an opportunity to relinquish such other membership in order to prevent disenrollment. [TCR 10-114, 12-127]

5-104 Enrollment application; who must submit. All persons requesting membership in the Winnebago Tribe of Nebraska must file an enrollment application. [TCR 10-114, 12-127]

5-105 Filing of enrollment application. All enrollment applications must be filed with the Enrollment Department of the Winnebago Tribe of Nebraska. Application forms may be obtained by written request to the Enrollment Department. There is no deadline established for filing an enrollment application except when an enrollment deadline is authorized by the Tribal Council for specific distribution of Tribal funds or for other purposes. The enrollment eligibility and enrollment application filing deadline for a new enrollee to share in such distribution and/or other purposes will be set forth in specific rulings issued by the Tribal Council. [TCR 10-114, 12-127]

5-106 Enrollment application for minors, incompetent persons, some United States Armed Forces members. If the applicant is a minor, incompetent person, or member of the Armed Services of the United States who is stationed outside the continental United States, an application for enrollment may be completed, filed and executed by a parent, recognized legal guardian, next of kin, spouse or other person responsible for the applicant's care as the sponsor of the applicant. [TCR 10-114, 12-127]

5-107 Enrollment application; information and supporting documentation requirements; burden of proof.

1. Each enrollment application must be completed in its entirety and must contain sufficient personal information to properly determine the applicant's eligibility for enrollment.
2. Applications must provide the following information:
   a) All names by which the applicant is known;
   b) The address of the applicant;
   c) The name of all Winnebago ancestors whose names appear on the Base Roll, together with the names of ancestors (if applicable) of the Ho-Chunk Nation of Wisconsin;
   d) The name of the tribe(s) and degree(s) of Indian blood of any federally recognized tribe(s) other than Winnebago if applicable;
   e) The signature of the applicant or sponsor; and
   f) The date of the filing of the application.
3. The application must be accompanied by all supporting documentation necessary to establish eligibility for membership, which may include the following:
   a) Applicant's original State-issued birth certificate, which shall be retained in the applicant's individual folder until a final enrollment decision is made;
   b) A copy of the applicant's social security card;
   c) A certificate of Indian blood from each federally recognized Indian Tribe claimed by applicant;
   d) A notarized paternity affidavit, if applicable;
   e) A court-issued judgment of paternity, if applicable;
   f) Probate records from the U.S. Department of Interior, Bureau of Indian Affairs showing the name of a relative through whom eligibility for membership is claimed, if applicable.
4. DNA testing may be required by the TEC and such testing must be done at a certified laboratory approved by the TEC, with the cost borne by the applicant.
5. In the event a State-certified birth certificate does not exist, the TEC may review the documentary evidence on a case by case basis to determine whether enrollment requirements are met.
6. If the father's name does not appear on the applicant's State-issued birth certificate and the father possesses Winnebago Indian blood or blood of another federally recognized Indian Tribe, the

TEC may consider, in its discretion on a case by case basis, a notarized paternity affidavit signed by the father as an acknowledgement of paternity.

7. The burden of proving eligibility for enrollment with the Winnebago Tribe of Nebraska shall be upon the applicant. The Base Roll or official documentation of enrollment by January 1, 1967, shall be authoritative in establishing blood quantum, provided that errors in blood quantum as shown on thee roll may be corrected upon submission of substantiating evidence pursuant to this Article. The words "substantiating evidence" as used in this Section shall mean such evidence that a reasonable person might accept as adequate to support a conclusion. [TCR 10-114, 12-127]

5-108 Actions required of the Enrollment Staff. All applications shall be received or routed to the Enrollment Department. Upon receipt of an application, the Enrollment Staff shall take the following actions:

1. Stamp the application form with the date on which it is received and acknowledge receipt of the form in writing to the applicant.
2. Create a folder for the application and supporting documents (hereinafter referred to as the "individual folder").
3. Ensure the application is complete. If the application is not complete, the Enrollment Department shall notify the applicant as to what is required for completion.
4. After all supporting documentation is received by the Enrollment Department, Enrollment Staff shall make a determination of blood quantum specifically by calculating Winnebago Indian blood, Indian blood from any other federally recognized Tribe, and total Indian blood.
5. Mark the application with the word "complete" and the date on which it is completed.
6. If the applicant possesses blood of any other federally recognized Indian tribe, determine possible dual enrollment.
7. Assign an application number to ensure confidentiality.
8. Record all relevant information regarding the applicant on the TEC's ancestry review spreadsheet form.
9. Complete actions required by subsection (6), (7) and (8) of this Section 5-108 within ninety (90) days from the day the application is marked "complete."
10. In emergency situations, expedite the processing of an enrollment application. Such applications may bypass review by the TEC and be submitted by the Enrollment Staff directly to the Tribal Council along with a written recommendation. Emergency situations are limited to cases involving the applicability of the Indian Child Welfare Act ("ICWA") or eligibility for tribal death benefits. In the alternative, emergencies involving ICWA may be processed according to Section 5-128 of this Article and corresponding provisions in the department's Policies & Procedures. [TCR 10-114, 11-125, 12-127]

5-109 Actions required of the TEC. Upon receipt of a completed application from the Enrollment Staff, the TEC shall take the following actions within thirty (30) days of its receipt of the applicant material from the Enrollment Staff:

1. Examines the ancestry review spreadsheet of the applicant.
2. Determine the accuracy and sufficiency of research, and identify additional action required by the Enrollment Staff or applicant.
3. Accept or reject applications in the form of a motion by the TEC.
4. Direct the Enrollment Staff to notify a rejected applicant of his/her right to request a formal review by the Tribal Council and appeal the decision to the Secretary of the Interior.
5. Direct the Enrollment Staff to submit a memorandum to the Tribal Council recommending final approval of membership for the applicants that the TEC found to be eligible for membership.

The memorandum shall attach the TEC's motion accepting the applications at issue. [TCR 10-114, 12-127]

5-110 Actions required of the Tribal Council. The Tribal Council, at a meeting duly convened, shall:

1. Approve or disapprove recommendations received from the TEC, or, in emergency cases, the Enrollment Staff. The names of new enrollees shall be stated and published in the formal Tribal Council action approving the applicants.
2. Direct the Enrollment Staff to assign enrollment numbers to approved applicants.
3. Conduct a formal review of the application and supporting materials upon request by a rejected applicant.
4. Document all decisions by Tribal Resolution. [TCR 10-114, 12-127]

5-111 Applicants determined ineligible by the TEC; formal review by Tribal Council.

1. If the TEC determines that an applicant is ineligible for membership, the Enrollment Staff shall notify the applicant of the determination of ineligibility in writing within thirty (30) days of the TEC's action. The notification shall be sent to the last known address of the applicant by certified mail, return receipt requested. The notice of ineligibility shall state the specific reasons given by the TEC for the determination of ineligibility.
2. The notice of ineligibility shall advise the applicant of the right to request a formal review of his/her application by the Tribal Council. The request for formal review must be submitted in writing within thirty (30) days from the date the applicant received the ineligibility notice. The notice shall also advise the applicant to submit with the request any supporting evidence not previously furnished.
3. Upon receipt of a written request for a formal review, the Tribal Council shall carefully review all documentary evidence presented with the application and the request. The Tribal Council shall render its decision based solely upon the evidence submitted and the qualifications for membership pursuant to the provisions of Article II of the Constitution of the Winnebago Tribe of Nebraska. The decision of the Tribal Council shall be documented by formal resolution. The Enrollment Staff shall send an official notice of rejection or approval for enrollment to the applicant based upon the decision of the Tribal Council. [TCR 10-114, 12-127]

5-112 Rejection of application by the Tribal Council; membership appeals. Upon a formal rejection decision by the Tribal Council, the applicant shall be advised by the Enrollment Staff of the decision and of his/her right to appeal the rejection decision to the Secretary of the Interior within thirty (30) days from the date written notice of the rejection is issued, except when the appeal is mailed from outside the United States in which case the appeal must be received within sixty (60) days, pursuant to the Code of Federal Regulations, 25 CFR Part 62. The decision of the Secretary of the Interior on the appeal shall be final. [TCR 10-114, 12-127]

5-113 Distribution of trust assets or other Financial Benefits; appeals. Applicants who are determined ineligible by the TEC when a roll is being prepared for distribution of Tribal trust assets or other Financial Benefits shall be notified of their right to make an appeal to the Tribal Council. The decision of the Tribal Council regarding eligibility for distribution of trust assets or other Financial Benefits shall be final. [TCR 10-114, 12-127]

5-114 Individual folders; contents of individual folder. An individual folder shall be established for each Tribal member. This folder shall contain the following items, where applicable:

1. Applicant form;

2. Ancestry review spreadsheet form;
3. State-issued birth certificate;
4. Copy of social security card;
5. Certification of Indian blood from each federally recognized Indian Tribe;
6. Documentation of Paternity;
7. Copy of resolutions affecting enrollment;
8. Address verification forms;
9. Correspondence;
10. Death records; and
11. Documentation of all federally recognized Indian blood, including specific calculation of the following:
    a. Winnebago Indian blood;
    b. Non-Winnebago Indian blood; and
    c. Total Indian blood. [TCR 10-114, 11-125, 12-127]

5-115 Access to records.

1. The Membership Roll. Upon a request to review the Membership Roll from a Winnebago Tribal member, the Enrollment Department shall allow the Tribal member to view the Membership Roll onsite in the Enrollment Department's office. Neither the Membership Roll nor any portion thereof may be copied and/or distributed to any person or organization except upon permission of the Winnebago Tribal Council by formal action. The Tribal Council shall use discretion in using and/or releasing information from the Membership Roll for the benefit of Tribal members or Tribal programs.
2. Individual folders. Information in individual folders shall be considered confidential. It shall not be available to anyone except that individual member (or his/her legal guardian or custodial parent) and to Enrollment Staff, TEC members and Tribal Council members when such examination is necessary in considering enrollment decisions. A Tribal member may provide written authorization to the Enrollment Department allowing the department to provide a direct response to requests for information contained in his or her individual folder from entities outside of the department. The written authorization must be signed and dated by the individual member (or his/her legal guardian or custodial parent). The Enrollment Department shall respond to such requests within ten (10) days of receiving the written authorization or the request for information, whichever is received later in time. [TCR 10-114, 12-127]

5-116 Updating records. Upon receipt of appropriate documentation, the Enrollment Staff is authorized to update the Membership Roll and enrollment records. The following documentation is deemed adequate for such actions to be taken:

1. Name change — marriage license; divorce decree; court order changing name; or other government-issued document.
2. Address change — written statement signed by Tribal member or his/her guardian.
3. Death — death certificate; probate record; obituary or court order. [TCR 10-114, 12-127]

5-117 Determination of blood quantum. The degree of Winnebago Indian blood shown on the Base Roll of the Winnebago Tribe and the official base roll of the Ho-Chunk Nation shall be used in all cases for determining blood quantum of an applicant, in addition to certificates of Indian blood from other federally recognized Indian tribes and complete records of lineage. The determination of total Indian blood shall be for enrollment purposes only, and such other Indian blood shall not be characterized as Winnebago Indian blood prior to or following enrollment of the applicant. Nor shall such other Indian

blood be characterized as Winnebago Indian blood by any descendants of the applicant. [TCR 10-114, 11-125, 12-127]

5-118 Blood quantum corrections; administrative actions; persons found to be ineligible.

1. A member may request that his/her blood quantum be corrected if he/she believes that his/her blood quantum was calculated in error or paternity was not established at the time of application, by submitting a written request to the Enrollment Department along with all supporting documentation. The request shall be processed in accordance with the department's Policies & Procedures.
2. The Enrollment Department is authorized to take administrative action to correct a blood quantum if there is reason to believe that an individual's blood quantum was calculated in error or is otherwise incorrect. The request shall be processed in accordance with the department's Policies & Procedures. Any person found to be ineligible for enrollment due to an error in blood quantum calculation at the time of enrollment, after proper notice, may be subject to disenrollment.
   [TCR 10-114, 12-127]

5-119 Enrollment of persons without an enrolled parent. Persons without a biological parent enrolled in the Winnebago Tribe of Nebraska may be enrolled in the Winnebago Tribe of Nebraska in accordance with Article II Section 1(d) of the Constitution of the Winnebago Tribe of Nebraska.
[TCR 10-114, 12-127]

5-120 Relinquishment of an adult. An adult Tribal member may relinquish membership in the Winnebago Tribe of Nebraska by submitting a written, signed and notarized statement to the Enrollment Department requesting that his/her name be removed from the Winnebago Tribal Membership Roll.

1. A conditional relinquishment request may be submitted if such member is applying for membership in another federally recognized Indian tribe. Upon approval, a conditional relinquishment will be effective for a period of six (6) months or until such time as the member is accepted for enrollment in another federally recognized Indian tribe, whichever comes first. If the member is not accepted for enrollment in the other tribe within six (6) months, the conditional relinquishment shall expire and the member will be required to resubmit his/her request in order to be reconsidered for relinquishment.
2. Any member requesting relinquishment shall first satisfy any outstanding financial obligations to the Tribe, including credit loans, educational loans or any other such debts. Upon receipt of the relinquishment request, the Enrollment Staff shall confirm that all tribal debts have been satisfied.
3. Relinquishment requests shall be submitted to the TEC for review and recommendation to the Tribal Council.
4. The TEC recommendation shall be submitted in writing to the Tribal Council for final approval. The relinquishment will be effective upon Tribal Council approval.
5. An adult person who relinquishes his/her membership shall not be entitled to any individual or Tribal benefits accruing to members of the Winnebago Tribe of Nebraska on or after the date on which the Enrollment Department receives the request for relinquishment. If benefits or funds that accrued prior to the date of relinquishment exist for the benefit of the individual at the time of relinquishment, including minor trust funds, such benefits and funds are immediately forfeited beginning on the date on which the Enrollment Department receives the request for relinquishment. If a conditional relinquishment expires, the individual is entitled to benefits accruing after and including the date on which the expiration of the conditional relinquishment occurs. All forfeited benefits of any kind whatsoever shall revert to the Tribe. Such person shall

also be permanently ineligible for membership with the Winnebago Tribe of Nebraska after relinquishment has been approved. [TCR 10-114, 12-127]

5-121 Prohibition on relinquishment of a minor. No person under the age of eighteen (18) may relinquish his/her enrollment in the Winnebago Tribe of Nebraska nor may any parent or guardian relinquish the enrollment of a minor on his or her behalf. Only upon reaching the age of majority may enrollees relinquish their membership in the Winnebago Tribe of Nebraska pursuant to procedures established by the Tribe. A person whose membership was relinquished as a minor by voluntary action of his/her parent or guardian (prior to the enactment of the prohibition on such relinquishment stated in this Section) may reapply for membership provided he/she meets current eligibility criteria.
[TCR 10-114, 12-127]

5-122 False information; fraudulent acts; otherwise ineligible.

1. Any person who knowingly gives false information or otherwise engages in fraudulent acts for the purpose of gaining membership in the Winnebago Tribe of Nebraska, and, without such information or acts, is ineligible for Tribal membership pursuant to the Tribe's membership requirements at the time of enrollment shall be disenrolled.
2. Any person found to be ineligible for enrollment due to an error in blood quantum calculation at the time of enrollment may be subject to disenrollment.
3. Any person found to be dually enrolled and who, after proper notice, fails to relinquish membership in the other tribe, may be subject to disenrollment. [TCR 10-114, 12-127]

5-123 Disenrollment.

1. The Enrollment Department shall notify a person subject to disenrollment of the Tribe's intent to disenroll him/her. The notice shall state the date set for a hearing before the Tribal Council regarding the matter and shall be sent by certified mail, return receipt requested. The hearing shall be held within thirty (30) days of the notice of disenrollment. Following the hearing, whether or not the affected member makes an appearance or response, the Tribal Council shall determine if the member is to be disenrolled. The decision shall be documented in a Tribal resolution. The Enrollment Department shall notify the member of the action taken by certified mail, return receipt requested.
2. The notice shall inform the individual of the right to appeal to the Secretary of Interior within thirty days of the date of receipt of the notice, except when the appeal is mailed from outside the United States in which case the appeal must be received within sixty (60) days.
3. All benefits or funds payable by the Tribe for the benefit of the individual subject to disenrollment shall be suspended beginning on the date of the notice of disenrollment. In the event the individual is not disenrolled upon final decision by the Tribal Council, or upon conclusion of appeal proceedings, eligibility for such benefits or funds shall be restored.
4. All benefits or funds for the benefit of the individual that accrued prior to the date disenrollment shall be immediately forfeited upon the disenrollment of the individual. All forfeited benefits of any kind whatsoever shall revert to the Tribe. [TCR 10-114, 12-127]

5-124 Amendment procedures. The Winnebago Tribal Council may amend this statute by a super majority vote of all Tribal Council members at a duly convened meeting. [TCR 11-125, 12-127]

5-125 Tribal Member Identification; Certification of Blood Quantum.

1. Tribal enrollment identification cards issued by the Tribe shall certify that the individual is an enrolled member of the Winnebago Tribe of Nebraska but shall not identify tribal blood quantum.
2. Individual tribal member blood quantum records shall be maintained by the Tribe pursuant to this Article, including calculation and documentation of Winnebago Indian blood, other federally recognized Indian blood and total Indian blood.
3. The identification of Winnebago Indian blood shall not include blood of other federally recognized Indian tribes.
4. Certification of blood quantum shall be available upon written request by a tribal member provided such certification shall specifically identify Winnebago Indian blood, other federally recognized Indian blood and total Indian blood. [TCR 12-127]

5-126 Use of Fingerprint Reader. The Enrollment Department may employ the use of a fingerprint reader to carry out its official business. The fingerprint reader shall be used only by the TEC or the Enrollment Staff for official business of the department relating to enrollment. Digital images or other replicas of or data relating to fingerprints of individuals obtained by the Enrollment Department shall be treated as confidential and shall be subject to the policy set forth in Section 5-115(2) above regarding access to records contained in individual folders. [TCR 12-127]

5-127 Claiming financial or other benefits on behalf of another tribal member. From time to time, the Tribal Council may authorize a distribution of funds or benefits having monetary value to tribal members or a subset thereof, including but not limited to stimulus payments or gift cards. If the recipient of such benefits is a minor child or an adult that has been found legally incompetent, and distribution is to be made directly to the individual and not into a minor's trust fund, then a custodial parent, legal guardian or conservator shall take possession of the benefit on behalf of the tribal member. Non-parent custodians, guardians and conservators of tribal members must provide proof of their relationship to the individual receiving the benefit in the form of a copy of a court order, a letter of appointment, or a letter from Child & Family Services or another social services agency. Such proof shall be placed in the individual folder of the minor or legally incompetent adult. [TCR 12-127]

5-128 Indian Child Welfare Act ("ICWA") cases.

1. Upon receipt of a request from the Tribal ICWA Department or its attorney, the Enrollment Department is authorized to provide membership or eligibility for membership information regarding persons who may be subject to such proceedings or investigations under the federal Indian Child Welfare Act (ICWA) or substantially similar law. A third party authorization for release of information is not required.
2. In the event such a request is received by the Enrollment Department from entities or agencies outside of the Tribe, including but not limited to courts and human services departments, the Enrollment Department shall forward it to the Tribal ICWA Department as soon as possible but in no case later than within two (2) business days of receipt. The Enrollment Department shall not provide enrollment or eligibility information directly to any outside agency in ICWA matters, but should only respond directly to the Tribal ICWA Department or its attorney.
3. The Enrollment Department is authorized to work with the Tribe's ICWA Department to establish such policies, procedures and forms necessary to facilitate efficient communication and exchange of information between the Departments.
4. Notwithstanding the limitation set forth in sub-section (2) above, the Enrollment Department is authorized to respond to requests for membership or eligibility information related to ICWA proceedings from other federally-recognized Indian tribes.

5. The Tribe's ICWA Department shall make reasonable efforts to file applications for enrollment on behalf of children whose ICWA cases are transferred to Tribal Court jurisdiction. The Tribe, acting through an ICWA or other Child & Family Services caseworker, shall be authorized to submit such application on behalf of such minor child consistent with Section 5-106 herein. [TCR 12-127]

5-129 Notices issued to last known address. The Enrollment Department shall use an individual's last known address for any mailings or notices required by this Article or the Enrollment Department's Policies & Procedures. [TCR 12-127]

TITLE 5
ARTICLE 2
ELECTIONS
(As revised July 22, 2015)

5-201 Eligible voters.
5-202 Election board.
5-203 Notice of election.
5-204 Qualification of candidates.
5-205 Ballots.
5-206 Absentee ballots.
5-207 Conduct of elections.
5-208 Polling place.
5-209 Conduct of election officials.
5-210 Stickers.
5-211 Campaigning.
5-212 Alcohol.
5-213 Loitering.
5-214 Election tampering.
5-215 Alternates or substitution.
5-216 Placement on Primary Election Ballot.
5-217 Absentee Ballots for Primary Election.
5-218 Primary Election.
5-219 Absentee ballots for Regular Election.
5-220 Regular Election.
5-221 Term of office.
5-222 Runoff election.
5-223 Certification and Oath of Office.

5-201 Eligible voters. Any recognized member of the Winnebago Tribe eighteen years of age and over and who has maintained residence within the reservation for a period of six months prior to the date of the regular election shall be a qualified voter. This ordinance further provides that the voter shall register in accordance with Section 5-202(3) of this Article.

1. Residence, for the purpose of this Article, shall be defined as physical presence within the reservation for six consecutive months immediately preceding the date of election, except that temporary absences from the reservation for purpose of:
   - A. Temporary employment.
   - B. Military service.
   - C. Attending a meeting, conference, training session or workshop.
   - D. Illness or physical disability.
   - E. Vacation.
   - F. Attending school, college or a university shall be considered as physical presence. Employment absences of more than twelve months shall not be considered as temporary.
   - G. Any recognized member of the Winnebago Tribe of Nebraska who is elderly and confined to a nursing or convalescent home but who maintained residence within the reservation for a period of six consecutive months immediately prior to being placed in a nursing or convalescent home shall be considered to have maintained residence on the reservation.
   - H. Any recognized member of the Winnebago Tribe who is incarcerated for a period of less than twelve months but who maintained residence within the reservation for a period of six consecutive months immediately prior to being incarcerated shall be considered to have maintained residence on the reservation.
2. Recognized member, for the purpose of this Article, shall be defined as any person who is an enrolled member of the Winnebago Tribe of Nebraska. [TCR 04-07]

5-202 Election board.

1. Election board members. A seven member reservation election board shall be appointed by the Tribal Council not less than ten days prior to the primary election for the purpose of supervising elections to be held under this Article. All reservation election board members shall be

administered the oath of office. (Exhibit #1.) All election board officials shall be sent a copy of this Article.

2. The reservation election board offices shall be:
   A. Two judges.
   B. Three clerks.
   C. Two sergeant-at-arms.
3. Duties of the reservation election board:
   A. The election board officials are required to read this Article before election day.
   B. Registration of voters. The reservation election board shall permit any eligible voter whose name appears on the "Eligible Voter List" of the Winnebago Tribe of Nebraska to register at the polls to vote once in the election. Each person desiring to register and vote at the polls shall sign the register (Exhibit #2) with his/her name, address, date of birth, period of latest residence, and if temporarily absent from the reservation, the reason for such temporary absence.
   C. The eligible voter list shall be approved by the Tribal Council at a duly called meeting, which shall be held on the second Monday in June. The eligible voter list from the previous year's election shall be updated by the Tribal Council at this meeting. The eligible voter list shall contain an appendix of those persons who will turn 18 years of age between the dates of the Primary and Regular Elections. Said persons shall be considered eligible voters for the Regular Election but shall not be considered eligible voters for the Primary Election, nor shall there names be counted toward the fifty (50) signatures required for a petition in 5-217(d). The inclusion or omission of a voter's name may be challenged by any physical resident member of the reservation within five days following posting. Challenges shall be in writing and presented to the Tribal Council. The Tribal Council shall make the final decision on the voting list challenge. A final and irrevocable eligible voters list shall be posted by the Tribal Council no later than the last Friday in June.
   D. Except as provided in (C), only those qualified voters whose names appear on the eligible voting list of the reservation shall be entitled to vote in the election.
   E. The Office of the General Counsel shall conduct training for the Election Board to insure they receive adequate knowledge of their duties under this Article. [TCR 01-105]

5-203 Notice of election. The Tribal Council shall prepare a notice (Exhibit #3) of the dates of elections and give such notice as is appropriate to inform the eligible voters of the date, time, and polling place, including, but not limited to posting of the notice in the Tribal office, the Bureau of Indian Affairs, the local United States Post Office and other places throughout the reservation. In addition, newspaper, radio and television may also be used. The notice of election shall be posted in those places provided for herein not less than ten days prior to the election.

5-204 Qualification of candidates.

1. A candidate for the Tribal Council shall:
   A. Be twenty-five years of age or over and a qualified voter.
   B. Be a bona fide resident of the Winnebago Reservation of Nebraska. A bona fide resident shall be interpreted to mean the six consecutive month period immediately preceding the Regular election and as further defined in Section 5-201 of this Article.
   C. Be an enrolled member of the Winnebago Tribe of Nebraska.
   D. Not have been convicted, terminated, removed or resigned from any tribal position for reasons of theft, stealing, misappropriation of funds, embezzlement, conversion or any related offense from the Winnebago Tribe of Nebraska.

2. The Tribal Council shall be the sole judge of the qualifications of its own members, as defined in the By-Laws, Article II, Section 1. The decision of the Tribal Council on the eligibility of candidates shall be final.
3. The Tribal Council shall provide a certified listing of qualified candidates for office on the Tribal Council. The secretary of the Tribal Council shall post a list of candidates in respective locations as defined in Section 5-203 of this Article at least seven days prior to the election. A copy of this Article shall also be posted in the polling place at least seven days prior to the election. [TCR 04-07, 15-106]

5-205 Ballots.

1. The Tribal Council shall provide the reservation election board with official printed ballots (Exhibit #4). The names of qualified candidates shall appear on the official printed election ballots in alphabetical order. A person may vote for up to three candidates. A voter may vote for a person or persons (up to three)
not appearing on the published ballot by writing the name of said person or persons legibly on the ballot.
2. Any ballot on which erasures have been made or on which more names have been marked than the number of vacancies for office, or which do not have the initials of the two judges and the three clerks shall be considered spoiled ballots and shall not be counted. No ballot shall be considered spoiled solely because less than three names have been marked. The election board shall certify to the number of votes cast, and the number of spoiled ballots and the final results of the election (Exhibit #5).

5-206 Absentee ballots.

1. Qualified voters for the purpose of this Article as defined in Section 5-201 of this Article, who are temporarily absent or otherwise unable to cast their ballots at the polling place on the reservation for any reason shall be entitled to vote by absentee ballot. Requests for such ballots must be in writing and filed with the secretary of the Tribal Council at least ten days prior to the date of election.
2. The Tribal Council shall determine the person's eligibility to vote immediately and shall give or mail an absentee ballot to the eligible voter in sufficient time to permit the eligible voter to execute and return it on or before 8:00 p.m. on the date of election. Together with the ballot, there shall be an inner envelope bearing on the outside the words, "Absentee Ballot," an envelope pre-addressed to the reservation election board, c/o the Secretary of the Winnebago Tribal Council, Winnebago, Nebraska, and an affidavit in the following form:

> I, _____ do solemnly affirm that I am an enrolled member of the Winnebago Tribe of Nebraska; and I shall be eighteen years of age or over on the election date. I have resided on the Winnebago Reservation in Nebraska for the six consecutive months immediately preceding the election and am entitled to vote in the election to be held _____and that I cannot appear at the polling place on the reservation on the date of Election because I expect to be absent from my reservation.
>
> _____
> (Voter)
>
> Subscribed and sworn to me before this ____day of _____, and I hereby certify that the affiant exhibited the ballot to me unmarked; that he/she then in my presence and in the presence of no other person, and in such manner that I

could not see his/her vote, marked such ballot and enclosed and sealed the same in the envelope marked "Absentee Ballot."

_____
(Notary Public)

3. Upon receipt, by the secretary of the Tribal Council, of the absentee ballot in the special pre-addressed envelope, the secretary shall immediately secure the unopened envelope which shall be given to the reservation election board on the day of election.
4. The eligible voter shall make and subscribe to the affidavit before any officer authorized by law to administer oaths, and thereupon in the presence of such officer and of no other person, make such absentee ballot, but in such a manner that the officer shall not know how the ballot was marked. After marking the absentee ballot, it shall, in the presence of the officer, be placed in the envelope marked "Absentee Ballot" and the envelope sealed. The "Absentee Ballot" envelope shall then be placed in the larger envelope together with the affidavit and mailed or delivered to the secretary of the Tribal Council. Absentee ballots must be received by the secretary of the Tribal Council who shall furnish them unopened to the reservation election board not later than the closing of the polls at 8:00 p.m. on election day to be counted. The secretary of the Tribal Council shall maintain a record (Exhibit #6) of absentee ballots mailed or delivered, to whom mailed or delivered, the date of mailing or delivering, the address on the envelope or the address to where delivered, the date of the return of the absentee ballot and from whom delivered, to whom ballot given, if other than the absentee voter and a copy of this record shall be given to the reservation election board at the time the absentee ballots are turned over to them by the secretary of the Tribal Council and they shall certify the absentee ballots were received unopened (Exhibit #7). The reservation election board shall count and register all such votes after all other ballots have been counted and include them in the results of the election.

5-207 Conduct of elections.

1. The reservation election board shall supervise the general conduct of elections. The Tribal Council shall provide an alphabetical list of eligible voters to the reservation election board. The reservation election board shall resolve all questions as to eligibility of voters, resolve all disputes arising from the tabulation of ballots cast in the polling place, compile the total votes cast at the election poll and the absentee ballots, certify the votes cast (Exhibit #5) and notify the Chairman and the secretary of the existing Tribal Council of those persons certified as elected to the Tribal Council immediately.
2. It shall be the responsibility of the Tribal Council to make arrangements for the polling place, obtain all materials such as ballots, voting booths or other facilities, which will assure a secret ballot, pencils, ballot boxes, and to establish such records as are required by this Article.
3. It shall be the responsibility of the judges of the reservation election board to verify, in the presence of the other members of the reservation election board, that the ballot box is empty of all ballots prior to the opening of the polls and the ballot box shall be padlocked.
4. The judges shall:
   A. Count the ballots provided by the Tribal Council.
   B. Record the number of ballots received.
   C. Open the polls at 8:00 a.m. at the prescribed location and close at 8:00 p.m. on the date of the election.
   D. Authorize additional ballots for voters only if others have been spoiled.
   E. Keep a record of all spoiled ballots.
   F. Keep all spoiled ballots separated from other ballots and deliver such ballots to the Tribal Council along with the ballot box.

G. Assure that no other ballot other than official election ballots are deposited in the ballot box. (Any person depositing an unauthorized ballot in the ballot box shall be reported to the Tribal Council or other designated party who shall file a complaint in Court for election tampering.)

H. Assure the proper tally of all votes cast in the election on the tally sheet (Exhibit #8).

I. Assure all ballots cast bear the initials of the two judges and the three clerks.

J. Prepare and deliver in the locked ballot box all properly cast ballots, all spoiled or mutilated ballots, all unused ballots and all records pertaining to the election on the reservation shall be given to the superintendent of the Bureau of Indian Affairs at the Winnebago Agency, who shall retain them for a period of ten years in a vault and thereafter shall have them destroyed.

5. The clerks shall:
   - A. Assist the judges in carrying out the responsibilities of the reservation election board.
   - B. Be assigned all record keeping duties.
   - C. Assist the voters by determining whether they are qualified to vote by:
     - i. Providing eligible voters with a ballot.
     - ii. By obtaining the signature and other required data, as defined in Section 5-202, of each eligible voter on a register and of those persons given ballots.
     - iii. By assisting those voters indicating a need for help. In the event a voter indicates a need for help in casting his/her ballot, two (2) election clerks shall assist that individual in marking and/or reading his/her ballot.
     - iv. Assist in the tally of votes cast.

6. Sergeant-at-arms:
   - A. The sergeant-at-arms shall be responsible for maintaining the orderly conduct of the election and for enforcing the provisions of the ordinance.
   - B. The sergeant-at-arms shall have the authority to remove disorderly, disruptive persons or persons deemed under the influence of alcohol as defined under Section 5-213.
   - C. The sergeant-at-arms shall have the prerogative to call the proper law enforcement officers and shall have the prerogative to refer the case to the Winnebago Tribal Court for prosecution. [TCR 86-116]

5-208 Polling place.

1. The following polling place shall be used in all Tribal elections and they shall be open from eight (8:00) in the morning until eight (8:00) in the evening, Central Standard Time, on the date established for the election in accordance with the Constitution, Article V, Section 3. Alternate polling places may be used provided the election notice identifies the new polling place: Blackhawk Community Center, Winnebago, Nebraska.
2. The reservation election board shall be responsible for secrecy of voting.

5-209 Conduct of election officials.

1. Election officials shall not be absent from the duties of their positions from the opening of the polls until all ballots have been counted and secured in the ballot box and delivered to the superintendent of the Bureau of Indian Affairs, at the Winnebago Agency, Winnebago, Nebraska.
2. The Tribal Council shall be responsible for the lunch, supper and snack for each of the reservation election board members, which shall be delivered to the polling site. The Tribal Council shall also pay each of the reservation election board members one hundred fifty dollars

and no cents ($150.00) for their services at the polling place on the day of the election, such payment shall be made within two days after the date of the election.

3. Election officials shall not express any preference for any candidate.

5-210 Stickers.

1. Ballots shall be secret and shall be cast by dropping into a locked ballot box.
2. The use of stickers shall not be recognized as a legal method of voting for any Tribal election and shall disqualify the ballot.

5-211 Campaigning. Campaigning within one hundred feet of the polling place is prohibited.

5-212 Alcohol. Any member under the influence of alcohol or controlled substance shall not be eligible to vote. The members of the reservation election board shall make all determinations under this Section and their majority decision shall be final. A person who cannot legibly register his/her name on an official registration form is deemed under the influence of alcohol or controlled substance. [TCR 86-116]

5-213 Loitering. No loitering on the premises of the polling place shall be permitted during voting hours or during the official tallying of the results.

5-214 Election tampering.

1. It shall be an offense, defined as "election tampering," for:
   A. Any voter to vote more than once at our election;
   B. To place more than one ballot in the ballot box for the same candidate; or
   C. Issue, or to campaign within one hundred feet of the polling place.
2. The person shall be charged with a misdemeanor, and the sergeant-at-arms shall have the prerogative to call the appropriate law enforcement officers and file charges against the individual on behalf of the Tribal Council.
3. In the event election tampering has indeed taken place, the Tribal Council shall declare the election invalid, and shall hold another election which shall be held within ten days after the date of the invalidation.
   A. The rules and regulations as set forth in this Section shall govern any subsequent election held because of election tampering.
   B. No Primary Election shall be necessary; the names of the candidates on the ballots of the invalidated election shall appear on the ballot. [TCR 86-116]

5-215 Alternates or substitution. The Tribal Council shall have the right to appoint a substitute or an alternate for any or all reservation election board members who are unable to serve or to carry out the duties of their offices as prescribed in this Article.

5-216 Placement on Primary Election Ballot.

1. Any person meeting the qualifications for office may seek to be placed on the Primary Election ballot by filing a Notice of Intent with the Chief Administrative Officer no later than the first Monday in August nor earlier than the first Monday in July. The Notice of Intent shall be on a form promulgated by the Tribal Council, and shall state that the person filing seeks to be placed upon the ballot for the Primary Election.
2. The Chief Administrative Officer, or his designee, shall ensure that the Notice of Intent, along with any applicable fee as set forth in (c), or a petition as provided in (d), meets the requirements

of this Article. If the requirements of this Article are met, the Chief Administrative Officer shall accept the Notice of Intent and the person filing said notice shall be declared a candidate for election, and shall be so notified. This determination shall be made within ten days of receipt of the Notice of Intent. A determination that a Notice of Intent meets the requirements of this Article shall be final and may not be reversed. If the Chief Administrative Officer determines that the Notice of Intent does not meet the requirements set forth in this Article, he/she shall so state in writing, specifically setting forth the reasons the notice cannot be accepted, and shall so inform the person filing the Notice of Intent via United States mail within ten days of receipt of the Notice of Intent. In the event the Chief Administrative Officer determines that said Notice of Intent or required submission is defective, the person filing the Notice of Intent shall be given the opportunity to cure any defects. Provided, such person shall not be allowed to cure any defects after the last day in which a Notice of Intent may be filed. Any such determination that a Notice of Intent is defective may be appealed to the Winnebago Tribal Council within five days after the determination is made. The decision of the Winnebago Tribal Council shall be final.

3. Any person filing a Notice of Intent to be a candidate must accompany the Notice of Intent with a fee of fifty dollars ($50.00). Said fees shall be used to defray the costs of holding the Primary and Regular Elections.
4. In lieu of the fee set forth in (c), a person may accompany a Notice of Intent with a petition setting forth at least fifty (50) signatures from persons eligible to vote in the Primary Election. Said petition shall be on a form promulgated by the Tribal Council and shall state that those persons signing support the candidacy of the person filing the Notice of Intent. Said petition must be filed with the Notice of Intent.

5-217 Absentee ballots for Primary Election. Absentee ballots for the Primary Election shall be mailed out no later than the last Monday in August.

5-218 Primary election. A Primary Election shall be employed as the method by which the Tribe chooses who will be placed on the ballot as its candidates in the Regular Election to the Winnebago Tribal Council. When there are greater than six candidates for Tribal Council, the Tribe shall conduct a Primary Election on the first Tuesday of September of each year. Said election shall be conducted in accordance with this Article. The six candidates for election receiving the highest number of votes in the Primary Election shall be placed on the ballot for the Regular Election held pursuant to Article V Section 3 of the Winnebago Tribal Constitution. In the event of a tie for the sixth highest number of votes, all such persons tying for the sixth spot on the ballot shall be placed upon the ballot for the Regular Election. In the event there are six or fewer qualified candidates who have filed for election to the Winnebago Tribal Council, all such candidates shall be placed on the ballot as candidates in the Regular Election and no Primary Election will be held. [TCR 16-122]

5-219 Absentee ballots for Regular Election. Absentee ballots for the Regular Election shall be mailed out no later than the last Monday in September.

5-220 Regular Election. The Regular Election shall be held on the first Tuesday after the first Monday in October in accordance with this Article.

5-221 Term of office. The three candidates receiving the highest number of votes in the Regular Election shall be declared elected for a term of three years. In the event a tie vote is received by more than three candidates on the ballot and this causes a question as to whom shall be seated, Section 5-223 of this Article shall apply.

5-222 Runoff election.

1. If candidates should receive an equal amount of votes cast in the Regular Election, which would be the determining factor as to who shall be seated, a runoff election shall be held not more than ten days after the date of the election.
2. In the event a tie is still received after the second runoff election, the candidates shall draw lots to determine who shall be seated on the Tribal Council; this shall be done under the supervision of the Tribal Council. The words "Tribal Council" for the purpose of this Section shall be defined as those members whose term of office had not expired at the date of the election and those who had successfully won a seat on the Tribal Council at the just-held election who have taken the oath of office.
3. The Tribal Council as defined in this Section 5-223(2), and the reservation election board members who supervised the just-held Tribal Council election shall also establish and supervise the runoff election or elections, as the case may be, following the same rules and regulations as set forth in this Section.
4. Unexpired terms to fill all vacancies on the Tribal Council shall be filled at the discretion of the members of which will, within thirty days, appoint a replacement for said vacancy.
5. Each Tribal Council member's term of office expires on the date of the election (immediately) following his/her tenure in office.
6. In the event of a tie for the third and fourth seats on the Tribal Council, there being a fourth seat vacant due to the death, resignation or removal of a Tribal Council member during his/her first or second year of office, the Tribal Council shall supervise the drawing of lots between the two parties to determine which member shall serve the full three-year term, and which member shall serve the remaining year(s) of the vacant seat. [TCR 86-116]

5-223 Certification and Oath of Office.

1. The reservation election board shall certify to each newly elected member of the Tribal Council of his/her election by mailing a certified, registered, return receipt requested letter (Exhibit #9) to each newly elected Tribal Council member. This shall be done within twenty-four hours from the date of the election.
2. The oath of office (Exhibit #10) shall be administered within forty-eight hours after the return of the registered letter is received by the Tribal Council or the Tribal office. The oath of office shall be administered by any officer qualified to administer an oath.
   A. The newly elected Tribal Council members shall meet within ten days of the receipt of such certification and shall proceed to organize as provided in the Constitution, Article III, Section 3.
   B. A majority of the Tribal Council as constituted after the election shall set the date, time and place to organize by notifying all Tribal Council members by an announcement which shall be certified with a return receipt requested (Exhibit #11). The letters shall be signed by a majority of the Tribal Council members.

TITLE 5
ARTICLE 3

[Reserved]

TITLE 5
ARTICLE 4
TRIBAL ELECTION PROCEDURES

5-400 Definitions.
5-401 Repealed.
5-402 Filing.
5-403 Fees.
5-404 Petition in lieu of fees.

5-400 Definitions.

1. "Candidate for Election" shall mean any person having duly filed a Notice of Intent as set forth in 5-402, and said Notice of Intent having been accepted by the Chief Administrative Officer of the Tribe.
2. "Notice of Intent" shall mean the document set forth in 5-402. Said document shall be on a form promulgated by the Tribal Council containing the following language and signed by the person seeking to become a candidate for election:

   I, _____, pursuant to Title V, Article 4 hereby declare my intent to be a candidate for election to the Winnebago Tribal Council. I certify that I meet the qualifications to be a candidate as set forth in 5-204 of the Winnebago Tribal Code. I further tender with this Notice of Intent a filing fee/petition (circle one) as required by Sections 5-403 & 5-404 of the Winnebago Tribal Code. [TCR 98-19]

5-401 Repealed [TCR 98-19, 16-122]

5-402 Filing.

1. Any person meeting the qualifications for office may seek to be placed upon the Primary Election ballot by filing a Notice of Intent with the Chief Administrative Officer no later than the first day of August in the year the person seeks to be placed on the ballot, and not earlier than the first day of July of said year.
2. The Chief Administrative Officer, or his designee, shall ensure that the Notice of Intent, along with any applicable fee as set forth in 5-403, or a petition as provided in 5-404, meets the requirements of this Article. If the requirements of this Article are met, the Chief Administrative Officer shall accept the Notice of Intent and the person filing said notice shall be declared a candidate for election, and shall be so notified. This determination shall be made within ten days of receipt of the Notice of Intent. If the Chief Administrative Officer determines that the Notice of Intent does not meet the requirements set forth in this Article, he shall so state in writing, specifically setting forth the reasons the Notice cannot be accepted, and shall so inform the person filing the Notice of Intent via United States mail. In the event the Chief Administrative Officer determines that said Notice of Intent or required submission is defective, the person filing the Notice of Intent shall be given the opportunity to cure any such defects. Provided, such person shall not be allowed to cure any defects after the last day by which a Notice of Intent may be filed. [TCR 98-19]

5-403 Fees. (Declare Fees are non-refundable). Any person filing a Notice of Intent to be a candidate must accompany the Notice of Intent with a fee of seventy-five dollars ($75.00). Said fees shall be used to defray the costs of holding the primary and regular elections. [TCR 98-19]

5-404 Petition in lieu of fees. Any person filing a Notice of Intent to be placed upon the primary election ballot, in lieu of the fee set out in 5-403, may file a petition setting forth at least seventy-five (75) signatures from persons eligible to vote in the upcoming Regular Election. Said petition shall be on a form promulgated by the Tribal Council and shall state that those persons signing support the candidacy of the person filing the Notice of Intent. Said petition must be filed with the Notice of Intent. [TCR 98-19]

TITLE 6
CIVIL TRAFFIC CODE
(As amended August 27, 2003)

SUMMARY OF CONTENTS

SECTION	ARTICLE-PAGE
1. TABLE OF REVISIONS	ii
2. TABLE OF CONTENTS	iii
3. ARTICLE 1: GENERAL PROVISIONS	1-1
4. ARTICLE 2: PROCEDURES	2-1
5. ARTICLE 3: LICENSING, REGISTRATION AND VEHICLE REQUIREMENTS	3-1
6. ARTICLE 4: MOVING TRAFFIC	4-1
7. ARTICLE 5: NON-MOVING TRAFFIC	5-1
8. ARTICLE 6: HIGHWAYS, ROADS AND BRIDGES	6-1
9. ARTICLE 7: VEHICLE AND TRAFFIC SAFETY	7-1
10. ARTICLE 8: MISCELLANEOUS	8-1

TITLE 6
TABLE OF REVISIONS

The following table is included in this title as a guide for determining whether each article properly reflects the current version. This table will be updated with the revision of each article.

Through usage and supplementation, pages in bound titles can be inserted and removed when sections are revised on an article-by-article basis. This table should be placed before the Table of Contents in the title.

The "Article" column lists each article, and the "Section" column lists any corresponding sections that have been revised, in sequence. The "Revised Date" column reflects the effective date of the revision (e.g., "6/20/15"). If an article is not listed in the table, it has not been revised since the December 2015 Winnebago Tribal Code update and distribution.

Article	**Section**	**Revised Date**

TITLE 6
CIVIL TRAFFIC CODE
(As amended August 27, 2003)

ARTICLE 1
GENERAL PROVISIONS

6-101 Purpose.
6-102 Construction of Rules.
6-103 References to the law of the State of Nebraska incorporated.
6-104 Inappropriate references to be given a common sense meaning.
6-105 Severability.
6-106 Violations; civil violation.
6-107 Peace officers; duty to enforce rules and laws; powers.
6-108 Civil penalties.

TITLE 6
ARTICLE 2
PROCEDURES

6-201 Enforcement; citation; complaint; contents; procedure.
6-202 Civil penalty and costs; failure to pay; judgment; installments.
6-203 Person charged with traffic infraction; citation; conditions; penalty.

TITLE 6
ARTICLE 3
LICENSING, REGISTRATION AND VEHICLE REQUIREMENTS

6-301 Motor vehicle registration.
6-302 Operation of unregistered motor vehicle; penalty.
6-303 Motor vehicle title.
6-304 Violation of motor vehicle title requirements; penalty.
6-305 Operator's license.
6-306 Violation of operator's license requirements; penalty.

TITLE 6
ARTICLE 4
MOVING TRAFFIC

6-401 Obedience to traffic control devices; exceptions.
6-402 Traffic control signals; meaning; turns on red signal; when.
6-403 Pedestrian-control signals.
6-404 Flashing signals; exception.
6-405 Driving on right half of roadway required; exceptions.
6-406 Vehicles proceeding in opposite direction; passing.
6-407 Overtaking and passing rules; vehicles proceeding in same direction.
6-408 Overtaking and passing upon the right; when permitted.
6-409 Limitations on overtaking and passing on the left; precautions required; return to right side of highway.
6-410 Limitations on overtaking, passing, or driving to the left of the center of roadway; when prohibited.
6-411 No-passing zones; exception.
6-412 One-way roadways and rotary traffic islands; jurisdiction; exception for emergency vehicles.
6-413 Driving on roadways laned for traffic; rules; traffic control devices.
6-414 Following vehicles; restrictions.
6-415 Driving on divided highways; driving on median prohibited; exceptions.
6-416 Driving on highway shoulders prohibited; exceptions.
6-417 Controlled-access highway; entrances; exits.
6-418 Vehicles approaching or entering intersection at same time; right-of-way; entering a highway or roadway.
6-419 Vehicle turning left; yield right-of-way.
6-420 Preferential right-of-way; stop and yield signs.
6-421 Vehicle entering roadway from private road or driveway; yield right-of-way.
6-422 Moving a stopped, standing, or parked vehicle; yield right-of-way.
6-423 Operation of vehicles upon the approach of emergency vehicles.
6-424 Driving upon sidewalk; prohibited; exception.
6-425 Basic rule; speed.
6-426 Speed; maximum limits; signs.
6-427 Special speed limitations; motor vehicle towing a mobile home; school buses; motor-driven cycle.
6-428 Speed determination; use of speed measurement devices; requirements; apprehension of driver; when.
6-429 Minimum speed regulation; impeding traffic.
6-430 Charging violations of speed regulation; summons; burden of proof; elements of offense.
6-431 Racing on highways; violation; penalty.
6-432 Driving under influence of alcoholic liquor or drug; penalties.
6-433 Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; when test administered; refusal; penalty.
6-434 Driving under influence of alcoholic liquor or drugs; test; additional rest; refusal to permit; effect; results of test; available upon request.
6-435 Driving under influence of alcoholic liquor or drugs; chemical test; consent of person incapable of refusal not withdrawn.
6-436 Driving under influence of alcoholic liquor or drugs; chemical test; violation of statute or ordinance; results; competent evidence.
6-437 Blood sample; results of chemical test; admissible in civil proceeding; disclosure required.
6-438 Person under twenty-one years of age; prohibited acts; enforcement.
6-439 Implied consent to submit to chemical test; when test administered; refusal; penalty.
6-440 Careless driving, defined; penalty.
6-441 Reckless driving, defined; penalty.
6-442 Willful reckless driving, defined.
6-443 Willful reckless driving; penalty.

TITLE 6
ARTICLE 5
NON-MOVING TRAFFIC

6-501 Pedestrian obedience to traffic control devices and regulations.
6-502 Pedestrians' right-of-way in crosswalk; traffic control devices.
6-503 Crossing at other than crosswalks; yield right-of-way.
6-504 Pedestrians on highways and roadways; sidewalks and shoulders.
6-505 Pedestrians soliciting rides or business; prohibited acts.
6-506 Stopping, parking, or standing upon a roadway or bridge; limitations.
6-507 Persons authorized to remove vehicles; cost of removal; lien.
6-508 Stopping, standing, or parking prohibited; exceptions.
6-509 Parking regulations; signs; control by local authority.
6-510 Unattended motor vehicles; conditions.
6-511 Overloading front seat or obstructing driver; prohibited.
6-512 Opening and closing vehicle doors; restriction.
6-513 Traveling on a downgrade; gears; position.
6-514 Following fire apparatus in response to an alarm; prohibited.
6-515 Restrictions on driving over unprotected fire hose.

TITLE 6
ARTICLE 6
HIGHWAYS, ROADS AND BRIDGES

6-601 Removal of traffic hazards; determined by local authority; violation; penalty.
6-602 Depositing materials on roads or ditches; penalties.
6-603 Rubbish on highways or roads; prohibited; signs; enforcement; violation; penalties.
6-604 Camping; permitted; where; violation; penalty.
6-605 Hunting, trapping, or molesting predatory animal on or from roadway; prohibited, exception; violation; penalty.
6-606 Advertising signs, displays, or devices; permitted signs enumerated.

TITLE 6
ARTICLE 7
VEHICLE AND TRAFFIC SAFETY

6-701 Peace officers; investigation of traffic accident; duty to report; Department of Roads; powers; duties.
6-702 Motor vehicle; accident; duty to stop; information to furnish; report; violation; penalty.
6-703 Accident; operator's duty; penalty.
6-704 Accidents; reports required of operators and owners; when; supplemental reports; reports of peace officers open to public inspection; limitation on use as evidence; violation; penalty.
6-705 Accidents; reports required of garages and repair shops.
6-706 Accidents; coroner; report to Nebraska Department of Roads.
6-707 Accident; death; driver; pedestrian sixteen years or older; coroner; examine body; amount of alcohol or drugs; report to Department of Roads; public information.
6-708 Accident; driver or pedestrian sixteen years of age or older; person killed; submit to chemical test; results in writing to Director-State Engineer; public information.
6-709 Accidents; body fluid; samples; test; report.
6-710 Roadway; removal of dead or injured persons; peace officer.
6-711 Roadways, travel on; regulation by local authorities; when authorized; signs.
6-712 Display of unauthorized signs, signals, or markings; public nuisance; removal.
6-713 Advertising devices adjacent to highway; when prohibited; public nuisance; removal.
6-714 Required obedience to traffic laws; private property used for public road by consent of owner; provisions uniform throughout the Reservation.
6-715 Drivers to exercise due care with pedestrian; audible signal.
6-716 Obedience to peace officers; violation; penalty.
6-717 Failing to observe a blind person; penalty.
6-718 Persons riding animals or driving animal drawn vehicles; farm implements; duties.
6-719 Interference with official traffic control devices or railroad signs or signals;
6-720 Signs, markers, devices, or notices; prohibited acts; penalty.
6-721 Motor vehicle; motorcycle; lights; requirements; prohibited acts.
6-722 Lights; vehicle being driven.
6-723 Headlights; construction; adjustment; requirements.
6-724 Violations; penalty.
6-725 Acetylene headlights; number; construction; requirements.
6-726 Headlights; glare; duty of operator; penalty.
6-727 Spotlights; auxiliary driving lights; signal lights; other devices; intensity and direction.
6-728 Parking lights; unlawful use.
6-729 Vehicle proceeding in forward motion; backup lights on; prohibited; violation; penalty.
6-730 Lights, red or green, in front of vehicle prohibited; exceptions.
6-731 Lights; rotating or flashing; colored lights; when permitted.
6-732 Flashing or rotating lights; emergency vehicles; colors permitted.
6-733 Rotating or flashing amber light; when permitted.
6-734 Rotating or flashing red light or red and blue lights; when permitted; application; permit; expiration.
6-735 Rotating or flashing lights; violation; penalty.
6-736 Clearance lights; requirements; substitution; violations; penalty.
6-737 Vehicles required to have clearance lights; flares; reflectors; when required as equipment.
6-738 Vehicles required to have clearance lights; flares; reflectors; how and when displayed.
6-739 Vehicles; red flags; red emergency reflectors; when required as equipment; how and when displayed.

TITLE 6
ARTICLE 7
VEHICLE AND TRAFFIC SAFETY
(continued)

6-740 Clearance lights, flares, and reflector requirements; violations; penalty.
6-741 Removing flares or flags; penalty.
6-742 Vehicles; slow moving; emblem required; when used.
6-743 Vehicles; slow moving; emblem; how equipped; penalty.
6-744 Load projecting to rear; red flag or red light required.
6-745 Motor vehicles; brakes; requirements.
6-746 Trailers; brake requirements; safety chains; when required.
6-747 Trucks and buses; brake requirements; violation; penalty.
6-748 Hydraulic brake fluids; requirements; violation; penalty.
6-749 Tires; requirements; cleats or projections prohibited; exceptions; permissive uses; special permits; exceptions.
6-750 Trucks; rearview mirror.
6-751 Operator; view to rear required; outside mirrors authorized.
6-752 Windshield and windows; nontransparent material prohibited; windshield equipment; requirements.
6-753 Safety glass, defined.
6-754 Safety glass; requirements; vehicles built after January 1, 1935; motorcycle windshield; requirements; violation; penalty.
6-755 Violation by common carrier; permit revoked or suspended.
6-756 Occupant protection systems.
6-757 Occupant protection system; 1973 year model and later motor vehicles; requirements; violation; penalty.
6-758 Child passenger; use restraint system or occupant protection system; when; information and education program.6-759 Child passenger restraint requirements; violations; penalty; defense.
6-760 Violation of child passenger restraint requirements; how construed.
6-761 Occupant protection system; use required; when; exceptions.
6-762 Enforcement of occupant protection system requirements; when.
6-763 Occupant protection system; violation; penalty.
6-764 Occupant protection system violation; evidence; when admissible.
6-765 Limitations on backing vehicles.
6-766 Obedience to signal indicating approach of train; prohibited acts.
6-767 Buses and school buses required to stop at all railroad grade crossings; exceptions.
6-768 Grade crossings; certain carriers; required to stop; exceptions.
6-769 School bus; safety requirements; use of stop signal arm; use of warning signal lights; violations; penalty.
6-770 Splash aprons; requirements; violation; penalty.
6-771 Towing; drawbars or other connections; length; red flag required, when.
6-772 Horn; requirements; prohibited acts.
6-773 Muffler or noise-suppressing system; prevention of fumes and smoke; requirements.
6-774 Television set; equipping motor vehicle with screen visible to driver; penalty.

TITLE 6
ARTICLE 8
MISCELLANEOUS

6-801 Motor vehicle owner or operator; liability to guest passenger; limitation.
6-802 Leased trucks, truck-tractors, and trailers; liability of owner for damages.
6-803 Operating a motor vehicle or a vessel to avoid arrest; penalty.
6-804 Winnebago Traffic Code; applicability to persons operating motorcycles.
6-805 Restrictions on operating motorcycles.
6-806 Operating motorcycles on roadways laned for traffic; prohibited acts.
6-807 Moped; operation; license or permit; required.
6-808 Moped; operator; Winnebago Traffic Code; applicable.
6-809 Moped; restrictions on operation.
6-810 Operating mopeds on roadways laned for traffic; prohibited acts.
6-811 Winnebago Traffic Code; applicability to persons operating bicycles.
6-812 Riding of bicycles; prohibited acts.
6-813 Bicycles on roadways and bicycle paths; general rules; regulation by local authority.
6-814 Equipment on bicycles; lights; brakes.
6-815 Bicycles; reflective device or material; retail sale; requirements; violation; penalty.
6-816 All-terrain vehicle, defined.
6-817 All-terrain vehicle; operation.
6-818 All-terrain vehicle; lights required; when.
6-819 All-terrain vehicle; equipment required.
6-820 Modification of all-terrain vehicle; prohibited.
6-821 All-terrain vehicle; competitive events; exemptions.
6-822 All-terrain vehicle; accident; report required.
6-823 Snowmobiles; registration required.
6-824 Snowmobile operation; equipment; permission of landowner.
6-825 Snowmobile contests; requirements.
6-826 Snowmobiles; prohibited acts.
6-827 Snowmobile; operation; muffler, when required.
6-828 Operation by person under twelve years of age; operation by a person under sixteen; restrictions; snowmobile safety certificate.
6-829 Snowmobile owner; prohibited acts.
6-830 Snowmobiles; carrying firearms; hunting; unlawful.
6-831 Snowmobile; confiscation; sale; proceeds; disposition.
6-832 Snowmobile operation; accident; requirements.
6-833 Legislative intent.
6-834 Minibikes; operation; violations; penalty; unlawful acts.
6-835 Radar transmission device; definitions.
6-836 Radar transmission device; operation; possession; unlawful; violation; penalty.
6-837 Authorized devices.
6-838 Prohibited device; seizure; disposal.
6-839 Abandoned motor vehicle, defined.
6-840 Abandoned motor vehicle; title; vest in local authority; when.

TITLE 6
ARTICLE 1
GENERAL PROVISIONS

6-101 Purpose.
6-102 Construction of Rules.
6-103 References to the law of the State of Nebraska incorporated.
6-104 Inappropriate references to be given a common sense meaning.
6-105 Severability.
6-106 Violations; civil violation.
6-107 Peace officers; duty to enforce rules and laws; powers.
6-108 Civil penalties.

Section 6-101 Purpose. To ensure the safety of persons and property within the Winnebago Reservation, the Winnebago Tribe has adopted the following civil traffic regulation and control laws. Furthermore, the Winnebago Tribe of Nebraska seeks:

1. To make more uniform traffic laws between state and Tribal jurisdictions;
2. To educate drivers so that they can develop instinctive habits resulting in safer emergency reactions;
3. To educate drivers and pedestrians of all ages to more readily understand each other's responsibilities and privileges when all obey the same rules;
4. To promote economic savings by relieving congestion and confusion in traffic;
5. To increase the efficiency of streets and highways by the application of uniform traffic control devices;
6. To reduce the huge annual loss of life and property which occurs on highways; and
7. To assist traffic law enforcement by encouraging voluntary compliance with law through uniform rules.

These laws are enacted in addition to, and not in lieu of, the Winnebago Criminal Code Title 3, Article 15, Alcohol-related Offenses. [TCR 86-31, 86-79, 03-172, Same as Neb Rev. Stat. 60-602]

Section 6-102 Construction of Rules. The provisions of the Winnebago Tribe of Nebraska Traffic Code shall be so interpreted and construed as to effectuate their general purpose to make uniform the laws relating to motor vehicles. [TCR 86-31, 86-79, 03-172, Same as Neb Rev. Stat. 60-604]

Section 6-103 References to the law of the State of Nebraska incorporated. Any references in this Title to the law of the State of Nebraska are hereby incorporated by reference to include the law of the Winnebago Tribe. [TCR 86-79, 03-172]

Section 6-104 Inappropriate references to be given a common sense meaning. Any references to jurisdiction, courts, agencies, offices, or other factors or issues which may not appropriately apply to the jurisdictional limitations of the Winnebago Tribe of Nebraska shall, wherever possible, be read in an analogous context appropriate to the jurisdiction and governmental structure and status of the Winnebago Tribe and be given a common sense meaning and interpretation consistent with that context. [TCR 86-79, 03-172]

Section 6-105 Severability. If any provision of this Code or the application of any provision of this Code to any person or circumstance is held invalid, the remainder of this Code shall not be affected thereby. [TCR 86-97, 89-87, 03-172]

Section 6-106 Violations; civil violation. Unless otherwise declared in the Winnebago Tribal Code with respect to particular offenses, a violation of any provision herein shall constitute a civil violation. [TCR 86-31, 86-79, 03-172, Same as Neb Rev. Stat. 60-682]

Section 6-107 Peace officers; duty to enforce rules and laws; powers. All peace officers are hereby specifically directed and authorized and it shall be deemed and considered a part of the official duties of each of such officers to enforce the provisions of the Winnebago Tribe of Nebraska Civil Traffic Code, including the specific enforcement of maximum speed limits, and any other law regulating the operation of vehicles or the use of the highways. [TCR 86-31, 86-79, 03-172, Same as Neb Rev. Stat. 60-683]

Section 6-108 Civil penalties.

1. The civil penalty for violations of this Title shall be as follows:

Level I	$25
Level II	$50
Level III	$100
Level IV	$150
Level V	$200
Level VI	$500

2. The penalties listed may be imposed in addition to any assessment of costs. [TCR 03-172]

TITLE 6
ARTICLE 2
PROCEDURES

6-201 Enforcement; citation; complaint; contents; procedure.
6-202 Civil penalty and costs; failure to pay; judgment; installments.
6-203 Person charged with traffic infraction; citation; conditions; penalty.

Section 6-201 Enforcement; citation; complaint; contents; procedure.

1. Court proceedings to enforce civil penalties herein are to be initiated by the issuance of a citation by a police officer or Tribal conservation officer or by the filing of a civil complaint by the Tribal prosecutor.
2. All required information shall be entered on the citation or complaint including the name and address of the cited person, the offense violated, the civil penalty due, and the date the penalty is to be paid.
3. One copy of the citation shall be delivered to the person cited, and a duplicate thereof shall be signed by such person. Such person thereupon shall be released from custody.
4. By accepting and signing a civil citation, the violator voluntarily consents to the civil jurisdiction of the Winnebago Tribe of Nebraska and agrees to pay the civil penalty as indicated on the citation by the specified date.
5. As soon as practicable, the copy signed by the person cited shall be delivered to the prosecuting attorney. [TCR 86-31, 86-79, 03-172, Same as Neb Rev. Stat. 29-424]

Section 6-202 Civil penalty and costs; failure to pay; judgment; installments.

1. The failure to pay a civil penalty by the specified date shall result in an automatic civil judgment against the violator.
2. A judgment entered against an individual for failure to pay a civil penalty shall be twice the amount of the penalty.
3. Notwithstanding the provisions of subsection (1) of this Section, when any violator demonstrates to the Court that he/she is unable to pay such penalty or costs in one lump sum, the Court shall make arrangements suitable to the Court or magistrate and to the violator by which the violator may pay in installments. The Court or magistrate shall enter an order specifying the terms of such arrangements and the dates on which payments are to be made. [TCR 86-31, 86-79, 03-172, Same as Neb Rev. Stat 29-2206]

Section 6-203 Person charged with traffic infraction; citation; conditions; penalty. Whenever any person shall be found to have violated the Winnebago Traffic Code, such person shall be issued a citation pursuant to the provisions of Section 6-201. Any person under the jurisdiction of the Winnebago Tribe of Nebraska who refuses to sign the citation shall be guilty of a Level I violation. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-684] **NOTE**: TCR 89-87 changes class of offense.

TITLE 6
ARTICLE 3
LICENSING, REGISTRATION AND VEHICLE REQUIREMENTS

6-301 Motor vehicle registration.
6-302 Operation of unregistered motor vehicle; penalty.
6-303 Motor vehicle title.
6-304 Violation of motor vehicle title requirements; penalty.
6-305 Operator's license.
6-306 Violation of operator's license requirements; penalty.

Section 6-301 Motor vehicle registration.

1. All motor vehicles owned or operated within the Winnebago Reservation shall register with the State of Nebraska in accordance with Nebraska law, Neb Rev. Stat. 60-102, et seq.
2. All provisions of the Nebraska Revised Statutes related to motor vehicle registration, including without limitation Neb Rev. Stat. Chapter 60, article 3 are hereby incorporated by reference as if fully set forth herein. [TCR 03-172]

Section 6-302 Operation of unregistered motor vehicle; penalty. Any person who operates a motor vehicle, semi-trailer, or cabin trailer on any roadway or highway, which vehicle has not been registered as required by the State of Nebraska shall be subject to a Level II civil penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-302.03] **NOTE**: TCR 89-87 changes class of offense.

Section 6-303 Motor vehicle title.

1. Title to motor vehicles owned or operated within the Winnebago Reservation shall be maintained and transferred by the State of Nebraska in accordance with the provisions of the Nebraska Revised Statutes.
2. All provisions of the Nebraska Revised Statutes related to title to motor vehicles, including Neb Rev. Stat. 60-116 through 60-117, are hereby incorporated by reference as if fully set forth herein. [TCR 03-172]

Section 6-304 Violation of motor vehicle title requirements; penalty. Any person who violates vehicle title requirements as set forth by the laws of the State of Nebraska, specifically Neb Rev. Stat. 60-116 and 60-117, shall be subject to a Level II civil penalty. [TCR 03-172]

Section 6-305 Operator's license.

1. No person may operate a motor vehicle within the Winnebago Reservation unless such person shall have a license for the operation of such motor vehicle issued by the State of Nebraska in accordance with the provisions of the Nebraska Revised Statutes, Neb Rev. Stat. 60-102, et seq.
2. All provisions of the Nebraska Revised Statutes related to operator's licenses under Chapter 60, article 4, are hereby incorporated by reference as if fully set forth herein. [TCR 03-172]

Section 6-306 Violation of operator's license requirements; penalty. Any person who violates the operator's license requirements as set forth by the laws of the State of Nebraska shall be subject to a Level II civil penalty. [TCR 03-172]

TITLE 6
ARTICLE 4
MOVING TRAFFIC

6-401 Obedience to traffic control devices; exceptions.
6-402 Traffic control signals; meaning; turns on red signal; when.
6-403 Pedestrian-control signals.
6-404 Flashing signals; exception.
6-405 Driving on right half of roadway required; exceptions.
6-406 Vehicles proceeding in opposite direction; passing.
6-407 Overtaking and passing rules; vehicles proceeding in same direction.
6-408 Overtaking and passing upon the right; when permitted.
6-409 Limitations on overtaking and passing on the left; precautions required; return to right side of highway.
6-410 Limitations on overtaking, passing, or driving to the left of the center of roadway; when prohibited.
6-411 No-passing zones; exception.
6-412 One-way roadways and rotary traffic islands; jurisdiction; exception for emergency vehicles.
6-413 Driving on roadways laned for traffic; rules; traffic control devices.
6-414 Following vehicles; restrictions.
6-415 Driving on divided highways; driving on median prohibited; exceptions.
6-416 Driving on highway shoulders prohibited; exceptions.
6-417 Controlled-access highway; entrances; exits.
6-418 Vehicles approaching or entering intersection at same time; right-of-way; entering a highway or roadway.
6-419 Vehicle turning left; yield right-of-way.
6-420 Preferential right-of-way; stop and yield signs.
6-421 Vehicle entering roadway from private road or driveway; yield right-of-way.
6-422 Moving a stopped, standing, or parked vehicle; yield right-of-way.
6-423 Operation of vehicles upon the approach of emergency vehicles.
6-424 Driving upon sidewalk; prohibited; exception.
6-425 Basic rule; speed.
6-426 Speed; maximum limits; signs.
6-427 Special speed limitations; motor vehicle towing a mobile home; school buses; motor-driven cycle.
6-428 Speed determination; use of speed measurement devices; requirements; apprehension of driver; when.
6-429 Minimum speed regulation; impeding traffic.
6-430 Charging violations of speed regulation; summons; burden of proof; elements of offense.
6-431 Racing on highways; violation; penalty.
6-432 Driving under influence of alcoholic liquor or drug; penalties.
6-433 Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; when test administered; refusal; penalty.
6-434 Driving under influence of alcoholic liquor or drugs; test; additional rest; refusal to permit; effect; results of test; available upon request.
6-435 Driving under influence of alcoholic liquor or drugs; chemical test; consent of person incapable of refusal not withdrawn.
6-436 Driving under influence of alcoholic liquor or drugs; chemical test; violation of statute or ordinance; results; competent evidence.
6-437 Blood sample; results of chemical test; admissible in civil proceeding; disclosure required.
6-438 Person under twenty-one years of age; prohibited acts; enforcement.
6-439 Implied consent to submit to chemical test; when test administered; refusal; penalty.
6-440 Careless driving, defined; penalty.
6-441 Reckless driving, defined; penalty.
6-442 Willful reckless driving, defined.
6-443 Willful reckless driving; penalty.

Section 6-401 Obedience to traffic control devices; exceptions.

1. The driver of any vehicle shall obey the instructions of any traffic control device applicable thereto placed in accordance with the Winnebago Tribe of Nebraska Traffic Code, unless otherwise directed by a peace officer, subject to the exceptions granted the driver of an authorized emergency vehicle in the Rules.
2. No provision of the Rules for which traffic control devices are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official device is not in proper position and sufficiently legible to be seen by a reasonably observant person. Whenever any provision of the Rules does not state that traffic control devices are required, such provision shall be effective even though no devices are erected or in place.
3. Whenever traffic control devices are placed in position approximately conforming to the requirements of the Rules, such devices shall be presumed to have been so placed by the official act or direction of lawful authority unless the contrary is established by competent evidence.
4. Any traffic control device placed pursuant to the Rules and purporting to conform with the lawful requirements pertaining to such devices shall be presumed to comply with the requirements of the Rules unless the contrary is established by competent evidence.
5. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,119]

Section 6-402 Traffic control signals; meaning; turns on red signal; when. Whenever traffic is controlled by traffic control signals exhibiting different colored lights or colored lighted arrows, successively one at a time or in combination, only the colors green, red, and yellow shall be used, except for special pedestrian signals carrying a word legend or symbol, and such lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

1.
   a. Vehicular traffic facing a circular green indication may proceed straight through or turn right or left unless a sign at such place prohibits either such turn, but vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such indication is exhibited;
   b. Vehicular traffic facing a green arrow indication, shown alone or in combination with another indication, may cautiously enter the intersection only to make the movement indicated by such arrow or such other movement as is permitted by other indications shown at the same time, and such vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection; and
   c. Unless otherwise directed by a pedestrian-control signal, pedestrians facing any green indication, except when the sole green indication is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk.
2.
   a. Vehicular traffic facing a steady yellow indication is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter when vehicular traffic shall not enter the intersection, and upon display of a steady yellow indication, vehicular traffic shall stop before entering the nearest crosswalk at the intersection, but if such stop cannot be made in safety, a vehicle may be driven cautiously through the intersection; and
   b. Pedestrians facing a steady yellow indication, unless otherwise directed by a pedestrian-control signal, are thereby advised that there is insufficient time to cross the roadway before a red indication is shown and no pedestrian shall then start to cross the roadway.

3.

a. Vehicular traffic facing a steady red indication alone shall stop at a clearly marked stop line or shall stop, if there is no such line, before entering the crosswalk on the near side of the intersection or, if there is no crosswalk, before entering the intersection. The traffic shall remain standing until an indication to proceed is shown except as provided in subdivisions (3)(b) and (3)(c) of this Section;

b. Except where a traffic control device is in place prohibiting a turn, vehicular traffic facing a steady red indication may cautiously enter the intersection to make a right turn after stopping as required by subdivision (3)(a) of this Section. Such vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection;

c. Except where a traffic control device is in place prohibiting a turn, vehicular traffic facing a steady red indication at the intersection of two one-way streets may cautiously enter the intersection to make a left turn after stopping as required by subdivision (3)(a) of this Section. Such vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection; and

d. Unless otherwise directed by a pedestrian-control signal, pedestrians facing a steady red indication alone shall not enter the roadway.

4. If a traffic control signal is erected and maintained at a place other than an intersection, the provisions of this Section shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking, the stop shall be made at the signal.

5. A violation of this Section shall be a Level II penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,123]

Section 6-403 Pedestrian-control signals. Whenever pedestrian-control signals exhibiting the words WALK or DON'T WALK or exhibiting the symbol of a walking person or an upraised hand are in place, such signals shall indicate as follows:

1. Pedestrians facing a steady WALK indication or a symbol of a walking person may proceed across the roadway in the direction of such signal and shall be given the right-of-way by the drivers of all vehicles; and

2. No pedestrian shall start to cross the roadway in the direction of a DON'T WALK indication or a symbol of an upraised hand, but any pedestrian who has partially completed his or her crossing on the WALK or walking person indication shall immediately proceed to a sidewalk or safety island while the flashing DON'T WALK or flashing upraised hand indication is showing.

3. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,124]

Section 6-404 Flashing signals; exception. Whenever an illuminated flashing red or yellow light is used in a traffic signal or with a traffic sign, it shall require obedience by vehicular traffic as follows:

1. When a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop at a clearly marked stop line or shall stop, if there is no such line, before entering the crosswalk on the nearside of the intersection or, if there is no crosswalk, at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection. The right to proceed shall be subject to the rules applicable after making a stop at a stop sign; and

2. When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such light only with caution.

3. This Section shall not apply at railroad grade crossings. Conduct of drivers of vehicles approaching railroad grade crossings shall be governed by the rules set forth in the Winnebago Tribal Code pertaining to such railroad grade crossings.
4. A violation of this Section shall be a Level II penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,125]

Section 6-405 Driving on right half of roadway required; exceptions.

1. Upon all roadways of sufficient width, a vehicle shall be driven upon the right half of the roadway except as follows:
   a. When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;
   b. When an obstruction exists making it necessary to drive to the left of the center of the highway, except that any person so doing shall yield the right-of-way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard;
   c. Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon; or
   d. Upon a roadway restricted to one-way traffic.
2. Upon all roadways, any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.
3. Upon any roadway having four or more lanes for moving traffic and providing for two-way movement of traffic, no vehicle shall be driven to the left of the center line of the roadway except when authorized by official traffic control devices designating certain lanes to the left side of the center of the roadway for use by traffic not otherwise permitted to use such lanes or except as permitted under subdivision (1)(b) of this Section. This subsection shall not be construed to prohibit the crossing of the center line in making a left turn into or from an alley, private road, or driveway unless such movement is otherwise prohibited by signs.
4. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,131]

Section 6-406 Vehicles proceeding in opposite direction; passing. Passing vehicles proceeding in opposite directions shall each keep to the right side of the roadway, passing left to left, and upon roadways having width for not more than one lane of traffic in each direction, each driver shall give to the other, as nearly as possible, at least one-half of the main-traveled portion of the roadway. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,132]

Section 6-407 Overtaking and passing rules; vehicles proceeding in same direction. Except when overtaking and passing on the right is permitted, the following rules shall govern the overtaking and passing of vehicles proceeding in the same direction:

1. The driver of a vehicle overtaking another vehicle proceeding in the same direction shall first give a visible signal of his or her intention and shall pass to the left of the other vehicle at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle; and

2. The driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle and shall not increase the speed of his/her vehicle until completely passed by the overtaking vehicle.
3. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,133]

Section 6-408 Overtaking and passing upon the right; when permitted.

1. The driver of a vehicle may overtake and pass on the right of another vehicle only under the following conditions:
   a. When the vehicle to be overtaken is making or about to make a left turn;
   b. Upon a two-way street or highway with an unobstructed roadway, not occupied by parked vehicles, of sufficient width for two or more lanes of moving vehicles going in the same direction when the passing vehicle is traveling in one of such lanes; or
   c. Upon a one-way street, or upon any roadway on which traffic is restricted to one direction of movement, when the roadway is free from obstructions and of sufficient width for two or more lanes of moving vehicles.
2. In no event shall the driver of a vehicle overtake and pass another vehicle upon the right unless such movement may be made safely upon the roadway.
3. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,134]

Section 6-409 Limitations on overtaking and passing on the left; precautions required; return to right side of highway.

1. No vehicle shall overtake another vehicle proceeding in the same direction on an undivided two-way roadway when such overtaking requires the overtaking vehicle to be driven on the left side of the center of the roadway unless the left side is clearly visible for a distance sufficient to accomplish such overtaking and is free from oncoming traffic for a distance sufficient to:
   a. Permit the overtaking vehicle to return to an authorized lane of traffic before coming within two hundred feet of any approaching vehicle; and
   b. Permit the overtaking vehicle to be safely clear of the overtaken vehicle while returning to the authorized lane of travel as provided in the Winnebago Tribal Code.
2. After completing such overtaking, the overtaking vehicle shall return to the authorized lane of travel as soon as practicable.
3. Any such overtaking shall be subject to the rules.
4. The provisions of this Section shall not permit the crossing of the center line of an undivided highway providing for two or more lanes of traffic in each direction for the purpose of overtaking and passing another vehicle.
5. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,135]

Section 6-410 Limitations on overtaking, passing, or driving to the left of the center of roadway; when prohibited.

1. No driver shall overtake and pass another vehicle or drive to the left of the center of the roadway whenever:
   a. He or she approaches the crest of a grade or is upon a curve in the highway where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction;

b. He or she approaches within one hundred feet of or traverses any intersection or railroad grade crossing;
c. The view is obstructed when he or she approaches within one hundred feet of any bridge, viaduct, or tunnel; or
d. The section of roadway is designated as a no-passing zone under Section 6-411.

2. The limitations imposed by subsection (1) of this Section shall not apply (a) upon a one-way roadway; (b) under the conditions described in subdivision (1)(b) of Section 6-405; or (c) to the driver of a vehicle turning left into or from an alley, private road, or driveway unless otherwise prohibited by signs.
3. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,136]

Section 6-411 No-passing zones; exception.

1. The local authorities may determine those portions of any highway under their respective jurisdictions where overtaking and passing or driving to the left of the center of the roadway would be especially hazardous and may by appropriate signs or markings on the roadway indicate the beginning and end of such zones. When such signs or markings are in place and clearly visible to an ordinarily observant person, every driver of a vehicle shall obey such indications.
2. Where signs or markings are in place to define a no-passing zone, no driver shall at any time drive on the left side of the roadway within such no-passing zone or on the left side of any pavement striping designed to mark such no-passing zone throughout its length.
3. This Section shall not apply (a) under the conditions described in subdivision (1)(b) of Section 6-405; or (b) to the driver of a vehicle turning left into or from an alley, private road, or driveway unless otherwise prohibited by signs.
4. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,137]

Section 6-412 One-way roadways and rotary traffic islands; jurisdiction; exception for emergency vehicles.

1. The local authorities with respect to roadways or highways under their respective jurisdictions may designate any highway, roadway, part of a roadway, or specific lanes upon which vehicular traffic shall proceed in one direction at all times or at such times as shall be indicated by traffic control devices.
2. Except for emergency vehicles, no vehicle shall be operated, backed, pushed, or otherwise caused to move in a direction which is opposite to the direction designated by competent authority on any deceleration lane, acceleration lane, access ramp, shoulder, or roadway.
3. A vehicle which passes around a rotary traffic island shall be driven only to the right of such island.
4. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,138]

Section 6-413 Driving on roadways laned for traffic; rules; traffic control devices. Whenever any roadway has been divided into two or more clearly marked lanes for traffic, the following rules, in addition to all others consistent with this Section, shall apply:

1. A vehicle shall be driven as nearly as practicable within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety;
2. Upon a roadway which is divided into three lanes and provides for two-way movement of traffic, a vehicle shall not be driven in the center lane except (a) when overtaking and passing another

vehicle traveling in the same direction when such center lane is clear of traffic within a safe distance; (b) in preparation for making a left turn; or (c) when such center lane is at the time allocated exclusively to traffic moving in the same direction that the vehicle is proceeding and such allocation is designated by traffic control devices;

3. Traffic control devices may be erected by local authorities to direct specified traffic to use a designated lane or to designate those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway and drivers of vehicles shall obey the directions of every such device; and
4. Traffic control devices may be installed by local authorities to prohibit the changing of lanes on sections of roadway and drivers of vehicles shall obey the directions of every such device.
5. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,139]

Section 6-414 Following vehicles; restrictions.

1. The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, and such driver shall have due regard for the speed of such vehicles and the traffic upon and the condition of the roadway.
2. The driver of any motor vehicle drawing a trailer, semi-trailer, or another vehicle, when traveling upon a roadway outside of a business or residential district, who is following another vehicle shall, subject to varying road conditions, leave sufficient space so that an overtaking vehicle may enter and occupy such space without danger and shall not follow another motor vehicle drawing a trailer, semi-trailer, or another vehicle more closely than one hundred feet. This subsection shall not prevent a vehicle from overtaking and passing any other vehicle.
3. The driver of a motor vehicle upon any roadway outside of a business or residential district in a caravan or motorcade, whether or not towing other vehicles, shall operate such vehicle so as to allow sufficient space between each such vehicle or combination of vehicles so as to enable any other vehicle to enter and occupy such space without danger. This subsection shall not apply to funeral processions.
4. The driver of any motor vehicle when traveling upon a roadway outside of a business or residential district shall not follow any highway maintenance vehicle more closely than one hundred feet if:
   a. Such highway maintenance vehicle is engaged in plowing snow, removing deposited material from the surface of the road, or spreading salt, sand, or other material upon the surface of the road or is in motion on or near the traveled portion of a road performing other highway maintenance duties; and
   b. Such highway maintenance vehicle is displaying a flashing amber or white light.

   This subsection shall not prevent a vehicle from overtaking and passing any other vehicle.
5. The driver of any motor vehicle, when traveling upon a roadway outside of a business or residential district, who is following another vehicle displaying flashing amber or white lights shall not follow such vehicle more closely than one hundred feet. This subsection shall not prevent a vehicle from overtaking and passing any other vehicle.
6. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,140]

Section 6-415 Driving on divided highways; driving on median prohibited; exceptions.

1. Whenever any highway has been divided into two or more roadways by a median, a driver shall drive only upon the right-hand roadway unless directed or permitted to use another roadway by traffic control devices or competent authority.

2. No driver shall drive any vehicle over, across, or within any median except through a median opening or median crossover as established by competent authority.
3. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,141]

Section 6-416 Driving on highway shoulders prohibited; exceptions. No person shall drive on the shoulders of highways, except that:

1. Vehicles may be driven on the shoulders of highways (a) by federal mail carriers while delivering the United States mail; or (b) to safely remove a vehicle from a roadway;
2. Implements of husbandry may be driven on the shoulders of highways; and
3. Bicycles and electric personal assistive mobility devices may be operated on paved shoulders of highways included in the state highway system.
4. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,142]

Section 6-417 Controlled-access highway; entrances; exits. No person shall drive a vehicle onto or from any controlled-access highway except at such entrances and exits as are established by competent authority. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,143]

Section 6-418 Vehicles approaching or entering intersection at same time; right-of-way; entering a highway or roadway.

1. When two vehicles approach or enter an intersection from different roadways at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.
2. Notwithstanding the provisions of subsection (1) of this Section, a vehicle entering a highway from an acceleration lane, a ramp, or any other approach road shall yield the right-of-way to a vehicle on the main roadway entering such merging area at the same time, regardless of whether the approach road is to the left or the right of the main roadway, unless posted signs indicate otherwise.
3. The driver of a vehicle about to enter or cross a paved roadway from an unpaved roadway and who is not subject to control by a traffic control device shall yield the right-of-way to all vehicles approaching on such paved roadway.
4. The right-of-way rules set forth in subsections (1) and (3) of this Section are modified at through highways and otherwise as stated in the Winnebago Traffic Code.
5. A violation of this Section shall be a Level II penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,146]

Section 6-419 Vehicle turning left; yield right-of-way. The driver of a vehicle who intends to turn to the left within an intersection or into an alley road, or driveway shall yield the right-of-way to any vehicle approaching from the opposite in which is within the intersection or approaching so close as to constitute an immediate hazard. A violation of this Section shall be a Level II penalty. [TCR 90-24, 03-172, Same as Neb Rev. Stat. 60-6,147]

Section 6-420 Preferential right-of-way; stop and yield signs.

1. Competent authority may provide for preferential right-of-way at an intersection and indicate such by stop signs or yield signs erected by such authorities.

2. Except when directed to proceed by a peace officer or traffic control signal, every driver of a vehicle approaching an intersection where a stop is indicated by a stop sign shall stop at a clearly marked stop line or shall stop, if there is no such line, before entering the crosswalk on the near side of the intersection or, if no crosswalk is indicated, at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection. After having stopped, such driver shall yield the right-of-way to any vehicle which has entered the intersection from another highway or which is approaching so closely on such highway as to constitute an immediate hazard if such driver moved across or into such intersection.
3. The driver of a vehicle approaching a yield sign shall slow to a speed reasonable under the existing conditions and, if required for safety to stop, shall stop at a clearly marked stop line or shall stop, if there is no such line, before entering the crosswalk on the near side of the intersection or, if no crosswalk is indicated, at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway. After slowing or stopping, such driver shall yield the right-of-way to any vehicle in the intersection or approaching on another highway so closely as to constitute an immediate hazard if such driver moved across or into such intersection.
4. A violation of this Section shall be a Level II penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,148]

Section 6-421 Vehicle entering roadway from private road or driveway; yield right-of-way. The driver of a vehicle emerging from an alley, driveway, private road, or building shall stop such vehicle immediately before driving onto a sidewalk and shall yield the right-of-way to any pedestrian approaching on any sidewalk. Before entering the highway, the driver shall yield the right-of-way to all vehicles approaching on such highway. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,149]

Section 6-422 Moving a stopped, standing, or parked vehicle; yield right-of-way. No person shall move a vehicle which is stopped, standing, or parked without yielding the right-of-way to all other vehicles and pedestrians affected by such movement and in no event until such movement can be made with reasonable safety. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,150]

Section 6-423 Operation of vehicles upon the approach of emergency vehicles.

1. Upon the immediate approach of an authorized emergency vehicle which makes use of proper audible or visual signals:
   a. The driver of any other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to and as close as possible to the right-hand edge or curb of the roadway or to either edge or curb of a one-way roadway, clear of any intersection, and shall stop and remain in such position until such emergency vehicle passes unless otherwise directed by any peace officer; and
   b. Any pedestrian using such roadway shall yield the right-of-way until such emergency vehicle passes unless otherwise directed by any peace officer.
2. This Section shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.
3. A violation of this Section shall be a Level III penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,151]

Section 6-424 Driving upon sidewalk; prohibited; exception. No person shall drive any vehicle upon a sidewalk except upon a permanent or duly authorized temporary driveway. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,178]

Section 6-425 Basic rule; speed. No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. A person shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve, when approaching a hillcrest, when traveling upon any narrow or winding roadway, and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions. [TCR 03-172, Same as Neb Rev. Stat. 60-6,185]

Section 6-426 Speed; maximum limits; signs.

1. Except when a special hazard exists that requires lower speed for compliance with Section 6-425, the limits set forth in this Section shall be the maximum lawful speeds unless reduced pursuant to subsection (2) of this Section, and no person shall drive a vehicle on a highway at a speed in excess of such maximum limits:
   a. Twenty-five miles per hour in any residential district;
   b. Twenty miles per hour in any business district;
   c. Fifty miles per hour upon any highway that is not dustless surfaced and not part of the state highway system;
   d. Fifty-five miles per hour upon any dustless-surfaced highway not a part of the state highway system;
   e. (i) Sixty miles per hour upon any part of the state highway system other than an expressway or a freeway, except where existing design and traffic conditions allow, according to an engineering study, a speed limit five miles per hour greater may be authorized by the appropriate officials.
2. The maximum speed limits established in subsection (1) of this Section may be reduced by local authorities as conditions warrant.
3. The Winnebago Tribe of Nebraska and/or the Nebraska Department of Roads and local authorities may erect and maintain suitable signs along highways under their respective jurisdictions in such number and at such locations as they deem necessary to give adequate notice of the speed limits established pursuant to subsection (1) or (2) of this Section upon such highways.
4. The penalty for a violation of this Section shall be as follows:
   a. 1-10 mph over posted limit Level I
   b. 11-15 mph over posted limit Level II
   c. 16-20 mph over posted limit Level III
   d. 21 mph and over posted limit Level IV

[TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,186]

Section 6-427 Special speed limitations; motor vehicle towing a mobile home; school buses; motor-driven cycle.

1. No person shall operate any motor vehicle when towing a mobile home at a rate of speed in excess of fifty miles per hour.
2. Notwithstanding the maximum speed limits established in Section 6-426, no person shall operate any school bus carrying any school child at a speed in excess of:

a. Fifty-five miles per hour on any part of the state highway system other than a freeway or any dustless-surfaced highway other than a freeway during the nighttime;
b. Forty-five miles per hour on any highway that is not dustless surfaced and not a part of the state highway system during the daytime; and
c. Forty miles per hour on any highway that is not dustless surfaced and not a part of the state highway system during the nighttime.

3. During the nighttime, no person shall operate upon a roadway any motor-driven cycle at a speed in excess of:
   a. Thirty-five miles per hour unless such motor-driven cycle is equipped with one or more headlights capable of revealing a person or vehicle in such roadway three hundred feet ahead and with a taillight on the rear exhibiting a red light visible, under normal atmospheric conditions, from a distance of at least five hundred feet to the rear of such motor vehicle;
   b. Twenty-five miles per hour if such headlight or headlights are not sufficient to reveal a person or vehicle in such roadway at least two hundred feet ahead; or
   c. Twenty miles per hour if such headlight or headlights do not reveal a person or vehicle in such roadway at least one hundred feet ahead. If the headlight or headlights do not reveal a person or vehicle in such roadway at least one hundred feet ahead, such motor-driven cycle shall not be driven upon the roadways during the nighttime.
4. The penalty for a violation of this Section shall be according to that which is set out in Section 6-426. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,187]

Section 6-428 Speed determination; use of speed measurement devices; requirements; apprehension of driver; when.

1. Determinations made regarding the speed of any motor vehicle based upon the visual observation of any peace officer, while being competent evidence for all other purposes, shall be corroborated by the use of a radio microwave, mechanical, or electronic speed measurement device. The results of such radio microwave, mechanical, or electronic speed measurement device may be accepted as competent evidence of the speed of such motor vehicle in any Court or legal proceeding when the speed of the vehicle is at issue. Before the Tribe may offer in evidence, the results of such radio microwave, mechanical, or electronic speed measurement device for the purpose of establishing the speed of any motor vehicle, the Tribe shall prove the following:
   a. The radio microwave, mechanical, or electronic speed measurement device was in proper working order at the time of conducting the measurement;
   b. The radio microwave, mechanical, or electronic speed measurement device was being operated in such a manner and under such conditions so as to allow a minimum possibility of distortion or outside interference;
   c. The person operating the radio microwave, mechanical, or electronic speed measurement device and interpreting such measurement was qualified by training and experience to properly test and operate the radio microwave, mechanical, or electronic speed measurement device; and
   d. The operator conducted external tests of accuracy upon the radio microwave, mechanical, or electronic speed measurement device, within a reasonable time both prior to and subsequent to an arrest being made, and the device was found to be in proper working order.
2. The driver of any motor vehicle measured by use of a radio microwave, mechanical, or electronic speed measurement device to be driving in excess of the applicable speed limit may be apprehended if the apprehending officer:
   a. Is in uniform and displays his or her badge of authority; and

b. (i) Has observed the recording of the speed of the motor vehicle by the radio microwave, mechanical, or electronic speed measurement device; or (ii) Has received a radio message from a peace officer who observed the speed recorded and the radio message:
   A. Has been dispatched immediately after the speed of the motor vehicle was recorded; and
   B. Gives a description of the vehicle and its recorded speed.

[TCR 86-31, 86-79, 03-172, Same as Neb Rev. Stat. 60-6,192]

Section 6-429 Minimum speed regulation; impeding traffic.

1. No person shall drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.
2. Whenever any local authority within its respective jurisdiction determines on the basis of an engineering and traffic investigation that low speeds on any part of a highway consistently impede the normal and reasonable movement of traffic, such local authority may determine and declare a minimum speed limit below which no person shall drive a vehicle except when necessary for safe operation or in compliance with law.
3. Any minimum speed limit which is imposed under subsection (2) of this Section shall not be effective until appropriate and adequate signs are erected along the roadway affected by such regulation apprising motorists of such limitation.
4. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,193]

Section 6-430 Charging violations of speed regulation; summons; burden of proof; elements of offense.

1. In every charge of violation of any speed regulation in the Winnebago Traffic Code, the complaint or citation shall specify the speed at which defendant is alleged to have driven and the maximum speed for the type of vehicle involved applicable within the district or at the location. The speed at which defendant is alleged to have driven and the maximum speed are essential elements of the offense and shall be proved by competent evidence.
2. The provisions of the rules which set maximum speed limitations shall not be construed to relieve the plaintiff in any action from the burden of proving negligence on the part of the defendant as the proximate cause of an accident. [TCR 86-31, 86-79, 03-172, Same as Neb Rev. Stat. 60-6,194]

Section 6-431 Racing on highways; violation; penalty.

1. No person shall drive any vehicle on any highway in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, or exhibition of speed or acceleration or for the purpose of making a speed record, and no person shall in any manner participate in any such race, competition, contest, test, or exhibition.
2. For purposes of this Section:
   a. Drag race shall mean the operation of two or more vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other or the operation of one or more vehicles over a common selected course, each starting at the same point and proceeding to the same point, for the purpose of comparing the relative speeds or power of acceleration of such vehicle or vehicles within a certain distance or time limit; and
   b. Racing shall mean the use of one or more vehicles in an attempt to outgain or outdistance another vehicle, to prevent another vehicle from passing, to arrive at a given destination

ahead of another vehicle or vehicles, or to test the physical stamina or endurance of drivers over long-distance driving routes.

3. Any person convicted of violating this Section shall be guilty of a Level IV penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,195]

Section 6-432 Driving under influence of alcoholic liquor or drug; penalties.

1. It shall be a civil violation for any person to operate or be in the actual physical control of any motor vehicle:
   a. While under the influence of alcoholic liquor or of any drug;
   b. When such person has a concentration of eight-hundredths (0.08) of one gram or more by weight of alcohol per one hundred milliliters of his or her blood;
   c. When such person has a concentration of eight-hundredths (0.08) of one gram or more by weight of alcohol per two hundred ten liters of his or her breath.
2. Any person who operates or is in the actual physical control of any motor vehicle while in a condition described in subdivision (1) of this Section shall be subject to a Level V penalty.
3. These acts shall also be unlawful pursuant to Title 3, Article 15 of the Winnebago Tribal Criminal Code. [TCR 86-31, 86-79, 95-06, 03-172, Same as Neb Rev. Stat. 60-6,196]

Section 6-433 Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; when test administered; refusal; penalty.

1. Any person who operates or has in his or her actual physical control a motor vehicle in this state shall be deemed to have given his or her consent to submit to a chemical test or tests of his or her blood, breath, or urine, for the purpose of determining the concentration of alcohol or the presence of drugs in such blood, breath, or urine.
2. Any peace officer who has been duly authorized to issue citations or make arrests for violations of traffic laws within this jurisdiction may require any person who violates any law arising out of acts alleged to have been committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of alcoholic liquor or drugs to submit to a chemical test or tests of his or her blood, breath, or urine for the purpose of determining the concentration of alcohol or the presence of drugs in such blood, breath, or urine when the officer has reasonable grounds to believe that such person was driving or was in the actual physical control of a motor vehicle upon a public roadway or highway within the reservation while under the influence of alcoholic liquor or drugs in violation of Section 6-432.
3. Any peace officer who has been duly authorized to issue citations or make arrests for violation of traffic laws of this jurisdiction may require any person who operates or has in his or her actual physical control a motor vehicle in the Winnebago Reservation to submit to a preliminary test of his or her breath for alcohol concentration if the officer has reasonable grounds to believe that such person has alcohol in his or her body, has committed a moving traffic violation, or has been involved in a traffic accident. Any person who refuses to submit to such preliminary breath test or whose preliminary breath test results indicate an alcohol concentration in violation of Section 6-432 shall be placed under arrest pursuant to Title 3, Article 15. Any person who refuses to submit to such preliminary breath test shall be guilty of a Level V offense.
4. Any person cited or arrested as provided in this Section may, upon the direction of a peace officer, be required to submit to a chemical test or tests of his or her blood, breath, or urine for a determination of the concentration of alcohol or the presence of drugs. If the chemical test discloses the presence of a concentration of alcohol in violation of subsection (1) of Section 6-432, the person shall be subject to a civil penalty as provided in Section 6-432. Any person who refuses to submit to such test or tests required pursuant to this Section shall be subject to a Level V penalty.

5. Any person involved in a motor vehicle accident within this jurisdiction may be required to submit to a chemical test of his or her blood, breath, or urine by any peace officer if the officer has reasonable ground to believe that the person was driving or was in actual physical control of a motor vehicle on a public roadway or highway within this jurisdiction while under the influence of alcoholic liquor or drugs at the time of the accident. A person involved in a motor vehicle accident subject to the implied consent law of this jurisdiction shall not be deemed to have withdrawn consent to submit to a chemical test of his or her blood, breath, or urine by reason of leaving this jurisdiction. If the person refuses a test under this Section and leaves the jurisdiction for any reason following an accident, he or she shall remain subject to subsection (4) of this Section upon return.
6. Any person who is required to submit to a preliminary breath test or to a chemical blood, breath, or urine test or tests pursuant to this Section shall be advised of (a) the consequences of refusing to submit to such test or tests and (b) the consequences if he or she submits to such test and the test discloses the presence of a concentration of alcohol in violation of subsection (1) of Section 6-432. Refusal to submit to such test or tests shall be admissible in any action for a violation of Section 6-432. [TCR 86-31, 86-79, 95-06, 03-172, Same as Neb Rev. Stat. 60-6,197]

Section 6-434 Driving under influence of alcoholic liquor or drugs; test; additional test; refusal to permit; effect; results of test; available upon request. The peace officer who required a chemical blood, breath, or urine test or tests pursuant to Section 6-433 may direct whether the test or tests shall be of blood, breath, or urine. The person tested shall be permitted to have a physician of his or her choice evaluate his or her condition and perform or have performed whatever laboratory tests he or she deems appropriate in addition to and following the test or tests administered at the direction of the officer. If the officer refuses to permit such additional test to be taken, then the original test or tests shall not be competent as evidence. Upon the request of the person tested, the results of the test or tests taken at the direction of the officer shall be made available to him/her. [TCR 86-31, 86-79, 03-172, Same as Neb Rev. Stat. 60-6,199]

Section 6-435 Driving under influence of alcoholic liquor or drugs; chemical test; consent of person incapable of refusal not withdrawn. Any person who is unconscious or who is otherwise in a condition rendering him/her incapable of refusal shall be deemed not to have withdrawn the consent provided by S Section 6-433 and the test may be given. [TCR 86-31, 86-79, 03-172, Same as Neb Rev. Stat. 60-6,200]

Section 6-436 Driving under influence of alcoholic liquor or drugs; chemical test; violation of statute or ordinance; results; competent evidence.

1. Any test made under Section 6-433, if made in conformity with the requirements of this Section, shall be competent evidence in any civil case under a Tribal law involving operating a motor vehicle while under the influence of alcoholic liquor or drugs or involving driving or being in actual physical control of a motor vehicle when the concentration of alcohol in the blood or breath is in excess of allowable levels.
2. Any test made in conformity with the requirements of this Section, shall be competent evidence in any civil case involving operating or being in actual physical control of a motor vehicle.
3. To be considered valid, tests of blood, breath, or urine shall be performed according to methods approved by the Nebraska Department of Health and by an individual possessing a valid permit issued by such department for such purpose, except that a physician, registered nurse, or other trained person employed by a licensed institution or facility or certified clinical laboratory to withdraw human blood for scientific or medical purposes, acting at the request of a peace officer, may withdraw blood for the purpose of a test to determine the alcohol concentration or the presence of drugs and no permit from the department shall be required for such person to

withdraw blood pursuant to such an order. The department may to be a health and safety hazard by driving with an excessive concentration of alcohol in his or her body and to deter others from driving while under the influence of alcohol. [TCR 86-31, 86-79, 89-87, 95-28, 03-172, Same as Neb Rev. Stat. 60-6,200]

Section 6-437 Blood sample; results of chemical test; admissible in civil proceeding; disclosure required.

1. If the driver of a motor vehicle involved in an accident is transported to a hospital within or outside of Nebraska and a sample of the driver's blood is withdrawn by a physician, registered nurse, qualified technician, or hospital for the purpose of medical treatment, the results of a chemical test of the sample shall be admissible in a civil proceeding under Section 6-432 to show the alcoholic content of or the presence of drugs or both in the blood at the time of the accident regardless of whether (a) a peace officer requested the driver to submit to a test as provided in Section 6-433 or (b) the driver had refused a chemical test.
2. Any physician, registered nurse, qualified technician, or hospital in this state performing a chemical test to determine the alcoholic content of or the presence of drugs in such blood for the purpose of medical treatment of the driver of a vehicle involved in a motor vehicle accident shall disclose the results of the test (a) to a prosecuting attorney who requests the results for use in a civil case under Section 6-432 and (b) to any prosecuting attorney in another state who requests the results for use in a criminal prosecution or civil case for driving while intoxicated, driving under the influence, or motor vehicle homicide under the laws of the other state if the other state requires a similar disclosure by any hospital or person in such state to any prosecuting attorney in Nebraska who requests the results for use in such a criminal prosecution under the laws of Nebraska. [TCR 95-28, 03-172, Same as Neb Rev. Stat. 60-6,210]

Section 6-438 Person under twenty-one years of age; prohibited acts; enforcement.

1. It shall be a civil violation for any person under twenty-one years of age to operate or be in the actual physical control of any motor vehicle:
   a. When such person has a concentration of two-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood but less than the concentration prescribed under subdivision (1)(b) of Section 6-432, or
   b. When such person has a concentration of two-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath but less than the concentration prescribed under subdivision (1)(c) of Section 6-432.
2. Enforcement of this Section by Tribal law enforcement agencies shall be accomplished only as a secondary action when the driver of a motor vehicle has been cited for a violation of some other offense. [TCR 95-28, 03-172, Same as Neb Rev. Stat. 60-6,211.01]

Section 6-439 Implied consent to submit to chemical test; when test administered; refusal; penalty.

1. Any person under twenty-one years of age who operates or has in his or her actual physical control a motor vehicle within this jurisdiction shall be deemed to have given his or her consent to submit to a chemical test or tests of his or her blood or breath for the purpose of determining the concentration of alcohol in such blood or breath.
2. Any peace officer who has been duly authorized to issue citations or make arrests for violations of traffic laws of this jurisdiction may require any person under twenty-one years of age who has been cited for some offense to submit to a chemical test or tests of his or her blood or breath when the officer has reasonable grounds to believe that such person was driving or was in the actual physical control of a motor vehicle in this jurisdiction in violation of Section 6-438. Such peace

officer may require such person to submit to a preliminary breath test. Any person who refuses to submit to such preliminary breath test or whose preliminary breath test results indicate an alcohol concentration in violation of Section 6-438 shall be subject to a Level V civil penalty.

3. Any person cited as provided in this Section may, upon the direction of a peace officer, be required to submit to a chemical test or tests of his or her blood or breath for a determination of the concentration of alcohol. If the chemical test discloses the presence of a concentration of alcohol in violation Section 6-438, the person shall be subject to a Level V civil penalty. Any person who refuses to submit to such test or tests required pursuant to this Section shall not have the tests taken but shall be subject to a Level V penalty. [TCR 95-28, 03-172, Same as Neb Rev. Stat. 60-6, 211.02]

Section 6-440 Careless driving, defined; penalty. Any person who drives any motor vehicle in this state carelessly or without due caution so as to endanger a person or property shall be guilty of careless driving. A violation of this Section shall be a Level II penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,212]

Section 6-441 Reckless driving, defined; penalty. Any person who drives any motor vehicle in such a manner as to indicate an indifferent or wanton disregard for the safety of persons or property shall be guilty of reckless driving. A violation of this Section shall be a Level III penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,213]

Section 6-442 Willful reckless driving, defined. Any person who drives any motor vehicle in such a manner as to indicate a willful disregard for the safety of persons or property shall be guilty of willful reckless driving. [TCR 86-31, 86-79, 03-172, Same as Neb Rev. Stat. 60-6,214]

Section 6-443 Willful reckless driving; penalty. Any person who is guilty of willful reckless driving shall be subject to a Level IV penalty. [TCR 86-31, 86-79, 03-172, Same as Neb Rev. Stat. 60-6,216]

TITLE 6
ARTICLE 5
NON-MOVING TRAFFIC

6-501 Pedestrian obedience to traffic control devices and regulations.
6-502 Pedestrians' right-of-way in crosswalk; traffic control devices.
6-503 Crossing at other than crosswalks; yield right-of-way.
6-504 Pedestrians on highways and roadways; sidewalks and shoulders.
6-505 Pedestrians soliciting rides or business; prohibited acts.
6-506 Stopping, parking, or standing upon a roadway or bridge; limitations.
6-507 Persons authorized to remove vehicles; cost of removal; lien.
6-508 Stopping, standing, or parking prohibited; exceptions.
6-509 Parking regulations; signs; control by local authority.
6-510 Unattended motor vehicles; conditions.
6-511 Overloading front seat or obstructing driver; prohibited.
6-512 Opening and closing vehicle doors; restriction.
6-513 Traveling on a downgrade; gears; position.
6-514 Following fire apparatus in response to an alarm; prohibited.
6-515 Restrictions on driving over unprotected fire hose.

Section 6-501 Pedestrian obedience to traffic control devices and regulations.

1. A pedestrian shall obey the instructions of any traffic control device specifically applicable to pedestrians unless otherwise directed by a peace officer.
2. Pedestrians shall be subject to traffic and pedestrian-control signals as provided in the Winnebago Traffic Code.
3. At all other places, pedestrians shall be accorded the privileges and shall be subject to the restrictions set forth in the rules.
4. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,152]

Section 6-502 Pedestrians' right-of-way in crosswalk; traffic control devices.

1. Except at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided, when traffic control signals are not in place or not in operation, the driver of a vehicle shall yield the right-of-way to a pedestrian crossing the roadway within a crosswalk who is in the lane in which the driver is proceeding or is in the lane immediately adjacent thereto by bringing his or her vehicle to a complete stop.
2. No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to stop.
3. Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.
4. The local authorities in their respective jurisdictions may, after an engineering and traffic investigation, designate unmarked crosswalk locations where pedestrian crossing is prohibited or where pedestrians shall yield the right-of-way to vehicles. Such restrictions shall be effective only when traffic control devices indicating such restrictions are in place.
5. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,153]

Section 6-503 Crossing at other than crosswalks; yield right-of-way.

1. Every pedestrian who crosses a roadway at any point other than within a marked crosswalk, or within an unmarked crosswalk at an intersection, shall yield the right-of-way to all vehicles upon the roadway.
2. Any pedestrian who crosses a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the roadway.
3. Between adjacent intersections at which traffic control signals are in operation, pedestrians shall not cross at any place except in a marked crosswalk.
4. No pedestrian shall cross a roadway intersection diagonally unless authorized by traffic control devices, and when authorized to cross diagonally, pedestrians shall cross only in accordance with the traffic control devices pertaining to such crossing movements.
5. Local authorities, by erecting appropriate official traffic control devices, may, within their respective jurisdictions, prohibit pedestrians from crossing any roadway in a business district or any designated highway except in a crosswalk.
6. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,154]

Section 6-504 Pedestrians on highways and roadways; sidewalks and shoulders.

1. Where a sidewalk is provided and its use is practicable, it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway or shoulder.
2. Where a sidewalk is not available and a shoulder is available, any pedestrian walking along and upon a highway shall walk only on the shoulder as far as practicable from the edge of the roadway.
3. Where neither a sidewalk nor a shoulder is available, any pedestrian who walks along and upon a highway shall walk as near as practicable to the edge of the roadway and, if on a two-way roadway, shall walk only on the left side of such roadway.
4. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,156]

Section 6-505 Pedestrians soliciting rides or business; prohibited acts.

1. No person shall stand in a roadway for the purpose of soliciting a ride, employment.
2. No person shall stand on or in proximity to a highway for the purposes of soliciting the watching or guarding of any vehicle while parked or about to be parked on a highway.
3. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,157]

Section 6-506 Stopping, parking, or standing upon a roadway or bridge; limitations.

1. No person shall stop, park, or leave standing any vehicle, whether attended or unattended, upon a roadway outside of a business or residential district when it is practicable to stop, park, or leave such vehicle off such part of a highway, but in any event an unobstructed width of the roadway opposite a standing vehicle shall be left for the free passage of other vehicles and a clear view of such stopped vehicle shall be available from a distance of two hundred feet in each direction upon such highway. Such parking, stopping, or standing shall in no event exceed twenty-four hours.
2. No person, except law enforcement, fire department, emergency management, public or private ambulance, or local authority personnel, shall loiter or stand or park any vehicle upon any bridge,

highway, or structure which is located above or below or crosses over or under the roadway of any highway or approach or exit road thereto.

3. This Section shall not apply to the driver of any vehicle which is disabled while on the roadway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position.
4. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,164]

Section 6-507 Persons authorized to remove vehicles; cost of removal; lien.

1. Whenever a peace officer, or any other authorized employee of a law enforcement agency who is employed by a political subdivision of the Tribe and specifically empowered by law to act, finds a vehicle standing upon a highway in violation of any of the provisions of the Winnebago Tribal Code, such individual may remove the vehicle, have such vehicle removed, or require the driver or other person in charge of the vehicle to move such vehicle to a position off the roadway of such highway or from such highway.
2. The owner or other person lawfully entitled to the possession of any vehicle towed or stored shall be charged with the reasonable cost of towing and storage fees. Any such towing or storage fee shall be a lien upon the vehicle prior to all other claims. Any person towing or storing a vehicle shall be entitled to retain possession of such vehicle until such charges are paid. The lien provided for in this Section shall not apply to the contents of any vehicle. [TCR 86-31, 86-79, 03-172, Same as Neb Rev. Stat. 60-6,165]

Section 6-508 Stopping, standing, or parking prohibited; exceptions.

1. Except when necessary to avoid conflict with other traffic or when in compliance with law or the directions of a peace officer or traffic control device, no person shall:
   a. Stop, stand, or park any vehicle:
      i. On the roadway side of any vehicle stopped or parked at the edge or curb of a street;
      ii. On a sidewalk;
      iii. Within an intersection;
      iv. On a crosswalk;
      v. Between a safety zone and the adjacent curb or within thirty feet of points on the curb immediately opposite the ends of a safety zone unless the local authority indicates a different length by signs or markings;
      vi. Alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic;
      vii. Upon any bridge or other elevated structure over a highway or within a highway tunnel;
      viii. On any railroad track; or
      ix. At any place where official signs prohibit stopping;
   b. Stand or park a vehicle, whether occupied or not, except momentarily to pick up or discharge a passenger or passengers:
      i. In front of a public or private driveway;
      ii. Within fifteen feet of a fire hydrant;
      iii. Within twenty feet of a crosswalk at an intersection;
      iv. Within thirty feet of any flashing signal, stop sign, yield sign, or other traffic control device located at the side of a roadway;

v. Within twenty feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five feet of such entrance when properly signposted; or

vi. At any place where official signs prohibit standing; or

c. Park a vehicle, whether occupied or not, except temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers:

i. Within fifty feet of the nearest rail of a railroad crossing; or

ii. At any place where official signs prohibit parking.

2. No person shall move a vehicle not lawfully under his or her control into any such prohibited area or away from a curb such a distance as shall be unlawful.

3. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,166]

Section 6-509 Parking regulations; signs; control by local authority.

1. Except as otherwise provided in this Section, any vehicle stopped or parked upon a two-way roadway where parking is permitted shall be so stopped or parked with the right-hand wheels parallel to and within twelve inches of the right-hand curb or edge of such roadway. No vehicle shall be parked upon a roadway when there is a shoulder adjacent to the roadway which is available for parking.

2. Except when otherwise provided by a local authority, every vehicle stopped or parked upon a one-way roadway shall be so stopped or parked parallel to the curb or edge of such roadway, in the direction of authorized traffic movement, with its right-hand wheels within twelve inches of the right-hand curb or edge of the roadway or its left-hand wheels within twelve inches of the left-hand curb or edge of such roadway.

3. A local authority may permit angle or center parking on any roadway, so long as local authorities have determined that such roadway is of sufficient width to permit angle or center parking without interfering with the free movement of traffic.

4. The local authority may prohibit or restrict stopping, standing, or parking on highways under its respective jurisdiction outside the corporate limits of any city or village and erect and maintain proper and adequate signs thereon. No person shall stop, stand, or park any vehicle in violation of the restrictions stated on such signs.

5. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,167]

Section 6-510 Unattended motor vehicles; conditions. No person having control or charge of a motor vehicle shall allow such vehicle to stand unattended on a highway without first stopping the motor of such vehicle, locking the ignition, removing the key from the ignition, and effectively setting the brakes thereon and, when standing upon any roadway, turning the front wheels of such vehicle to the curb or side of such roadway. A violation of this Section shall be a Level I penalty. [TCR 88-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,168]

Section 6- 511 Overloading front seat or obstructing driver; prohibited.

1. No person shall drive a motor vehicle when it is so loaded, or when there is in the front seat such a number of persons, exceeding three, as to obstruct the view of the driver to the front or sides of the vehicle or to interfere with the driver's control over the driving mechanism of such vehicle.

2. No passenger in a vehicle shall ride in such a position as to interfere with the driver's view ahead or to the sides or to interfere with the driver's control over the driving mechanism of such vehicle.

3. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,179]

Section 6-512 Opening and closing vehicle doors; restriction. No person shall open the door of a motor vehicle on the side available to moving traffic unless and until it is reasonably safe to do so and it can be done without interfering with the movement of other traffic, nor shall any person leave a door open on the side of a vehicle available to moving traffic for a period of time longer than necessary to load or unload property or passengers. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,180]

Section 6-513 Traveling on a downgrade; gears; position. The driver of a motor vehicle when traveling upon a downgrade upon any highway shall not coast with the gears of such vehicle in neutral. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,182]

Section 6-514 Following fire apparatus in response to an alarm; prohibited. The driver of any vehicle other than one on official business shall not follow any fire apparatus traveling in response to a fire alarm closer than five hundred feet or drive into or park such vehicle within the block where fire apparatus has stopped in answer to a fire alarm. A violation of this Section shall be a Level III penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,183]

Section 6-515 Restrictions on driving over unprotected fire hose. No vehicle shall be driven over unprotected hose of a fire department when laid down on any highway or private road or driveway, in use or to be used at any fire or alarm of fire, without the consent of the fire department official in command. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,184]

TITLE 6
ARTICLE 6
HIGHWAYS, ROADS AND BRIDGES

6-601 Removal of traffic hazards; determined by local authority; violation; penalty.
6-602 Depositing materials on roads or ditches; penalties.
6-603 Rubbish on highways or roads; prohibited; signs; enforcement; violation; penalties.
6-604 Camping; permitted; where; violation; penalty.
6-605 Hunting, trapping, or molesting predatory animal on or from roadway; prohibited, exception; violation; penalty.
6-606 Advertising signs, displays, or devices; permitted signs enumerated.

Section 6-601 Removal of traffic hazards; determined by local authority; violation; penalty. It shall be the duty of the owner of real property to remove from such property any tree, plant, shrub, or other obstruction, or part thereof, which, by obstructing the view of any driver, constitutes a traffic hazard. When the local authority determines upon the basis of traffic investigation that such a traffic hazard exists, it shall notify the owner and order that the hazard be removed within ten days. Failure of the owner to remove such traffic hazard within ten days shall constitute a Level I penalty. Every day such owner fails to remove it shall be a separate offense. [TCR 86-31, 86-79, 89-87, 03-172; Same as Neb Rev. Stat. 39-308]

Section 6-602 Depositing materials on roads or ditches; penalties. Any person who deposits any wood, stone, or other kind of material on any part of any lawful public road within the reservation, inside of the ditches of such road, or outside of the ditches but so near thereto as to cause the banks thereof to break into the same, causes the accumulation of rubbish, or causes any kind of obstruction, shall be guilty of a Level III penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 39-310]

Section 6-603 Rubbish on highways or roads; prohibited; signs; enforcement; violation; penalties.

1. No person shall throw or deposit upon any highway or road:
   a. Any glass bottle, glass, nails, tacks, wire, cans, or other substance likely to injure any person or animal or damage any vehicle upon such highway; or
   b. Any burning material.
2. Any person who deposits or permits to be deposited upon any highway or road any destructive or injurious material shall immediately remove such or cause it to be removed.
3. Any person who removes a wrecked or damaged vehicle from a highway or road shall remove any glass or other injurious substance deposited on the highway or road from such vehicle.
4. The local authority may procure and place at reasonable intervals on the side of highways under its respective jurisdiction appropriate signs showing the penalty for violating this Section. Such signs shall be of such size and design as to be easily read by persons on such highways, but the absence of such a sign shall not excuse a violation of this Section.
5. It shall be the duty of all law enforcement officers and conservation officers to enforce this Section and to make prompt investigation of any violations of this Section reported by any person.
6. Any person who violates any provision of this Section shall be guilty of a Level III penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 39-311]

Section 6-604 Camping; permitted; where; violation; penalty.

1. It shall be unlawful to camp on any Tribal, state or county public highway, roadside area, park, or other property acquired for highway or roadside park purposes except at such places as are designated campsites by the Winnebago Tribal Council, its designee or other legal entity owning or controlling such places.
2. For purposes of this Section, camping means temporary lodging out of doors and presupposes the occupancy of a shelter designed or used for such purposes, such as a sleeping bag, tent, trailer, station wagon, pickup camper, camper-bus, or other vehicle, and the use of camping equipment and camper means an occupant of any such shelter.
3. Any person who camps on any Tribal, state or county public highway, roadside area, park, or other property acquired for highway or roadside park purposes, which has not been properly designated as a campsite, or any person who violates any lawfully promulgated rules or regulations properly posted to regulate camping at designated campsites shall be guilty of a Level II penalty and shall be ordered to pay any amount as determined by the Court which may be necessary to reimburse the Tribe or other entity for the expense of repairing any damage to such campsite resulting from such violation. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 39-312]

Section 6-605 Hunting, trapping, or molesting predatory animal on or from roadway; prohibited, exception; violation; penalty.

1. No person shall hunt, trap, or molest any predatory animal on or upon any portion of a roadway or approach or exit thereto except at locations designated for such purpose.
2. No person shall shoot from the roadway onto or across the land of any farmer or landowner or kill, attempt to kill, or retrieve any wildlife or game on such land prior to receiving permission from such farmer or landowner.
3. A violation of this Section shall be a Level II penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 39-313]

Section 6-606 Advertising signs, displays, or devices; permitted signs enumerated.

1. The following signs shall be permitted along roadways within the Winnebago Reservation:
   a. Directional and official signs to include, but not be limited to, signs and notices pertaining to natural wonders, scenic attractions, and historical attractions;
   b. Signs, displays, and devices advertising the sale or lease of property upon which such media are located;
   c. Signs, displays, and devices advertising activities conducted on the property on which such media are located; and
   d. Landmark signs, signs on farm structures, markers, and plaques of historical or artistic significance.
2. A violation of this Section shall be a Level II penalty. [TCR 86-31, 86-79, 89-87, 03-172; Same as Neb Rev. Stat. 39-202]

TITLE 6
ARTICLE 7
VEHICLE AND TRAFFIC SAFETY

6-701 Peace officers; investigation of traffic accident; duty to report; Department of Roads; powers; duties.
6-702 Motor vehicle; accident; duty to stop; information to furnish; report; violation; penalty.
6-703 Accident; operator's duty; penalty.
6-704 Accidents; reports required of operators and owners; when; supplemental reports; reports of peace officers open to public inspection; limitation on use as evidence; violation; penalty.
6-705 Accidents; reports required of garages and repair shops.
6-706 Accidents; coroner; report to Nebraska Department of Roads.
6-707 Accident; death; driver; pedestrian sixteen years or older; coroner; examine body; amount of alcohol or drugs; report to Department of Roads; public information.
6-708 Accident; driver or pedestrian sixteen years of age or older; person killed; submit to chemical test; results in writing to Director-State Engineer; public information.
6-709 Accidents; body fluid; samples; test; report.
6-710 Roadway; removal of dead or injured persons; peace officer.
6-711 Roadways, travel on; regulation by local authorities; when authorized; signs.
6-712 Display of unauthorized signs, signals, or markings; public nuisance; removal.
6-713 Advertising devices adjacent to highway; when prohibited; public nuisance; removal.
6-714 Required obedience to traffic laws; private property used for public road by consent of owner; provisions uniform throughout the Reservation.
6-715 Drivers to exercise due care with pedestrian; audible signal.
6-716 Obedience to peace officers; violation; penalty.
6-717 Failing to observe a blind person; penalty.
6-718 Persons riding animals or driving animal drawn vehicles; farm implements; duties.
6-719 Interference with official traffic control devices or railroad signs or signals;
6-720 Signs, markers, devices, or notices; prohibited acts; penalty.
6-721 Motor vehicle; motorcycle; lights; requirements; prohibited acts.
6-722 Lights; vehicle being driven.
6-723 Headlights; construction; adjustment; requirements.
6-724 Violations; penalty.
6-725 Acetylene headlights; number; construction; requirements.
6-726 Headlights; glare; duty of operator; penalty.
6-727 Spotlights; auxiliary driving lights; signal lights; other devices; intensity and direction.
6-728 Parking lights; unlawful use.
6-729 Vehicle proceeding in forward motion; backup lights on; prohibited; violation; penalty.
6-730 Lights, red or green, in front of vehicle prohibited; exceptions.
6-731 Lights; rotating or flashing; colored lights; when permitted.
6-732 Flashing or rotating lights; emergency vehicles; colors permitted.
6-733 Rotating or flashing amber light; when permitted.
6-734 Rotating or flashing red light or red and blue lights; when permitted; application; permit; expiration.
6-735 Rotating or flashing lights; violation; penalty.
6-736 Clearance lights; requirements; substitution; violations; penalty.
6-737 Vehicles required to have clearance lights; flares; reflectors; when required as equipment.
6-738 Vehicles required to have clearance lights; flares; reflectors; how and when displayed.
6-739 Vehicles; red flags; red emergency reflectors; when required as equipment; how and when displayed.
6-740 Clearance lights, flares, and reflector requirements; violations; penalty.
6-741 Removing flares or flags; penalty.
6-742 Vehicles; slow moving; emblem required; when used.

TITLE 6
ARTICLE 7
VEHICLE AND TRAFFIC SAFETY
(continued)

6-743 Vehicles; slow moving; emblem; how equipped; penalty.
6-744 Load projecting to rear; red flag or red light required.
6-745 Motor vehicles; brakes; requirements.
6-746 Trailers; brake requirements; safety chains; when required.
6-747 Trucks and buses; brake requirements; violation; penalty.
6-748 Hydraulic brake fluids; requirements; violation; penalty.
6-749 Tires; requirements; cleats or projections prohibited; exceptions; permissive uses; special permits; exceptions.
6-750 Trucks; rearview mirror.
6-751 Operator; view to rear required; outside mirrors authorized.
6-752 Windshield and windows; nontransparent material prohibited; windshield equipment; requirements.
6-753 Safety glass, defined.
6-754 Safety glass; requirements; vehicles built after January 1, 1935; motorcycle windshield; requirements; violation; penalty.
6-755 Violation by common carrier; permit revoked or suspended.
6-756 Occupant protection systems.
6-757 Occupant protection system; 1973 year model and later motor vehicles; requirements; violation; penalty.
6-758 Child passenger; use restraint system or occupant protection system; when; information and education program.
6-759 Child passenger restraint requirements; violations; penalty; defense.
6-760 Violation of child passenger restraint requirements; how construed.
6-761 Occupant protection system; use required; when; exceptions.
6-762 Enforcement of occupant protection system requirements; when.
6-763 Occupant protection system; violation; penalty.
6-764 Occupant protection system violation; evidence; when admissible.
6-765 Limitations on backing vehicles.
6-766 Obedience to signal indicating approach of train; prohibited acts.
6-767 Buses and school buses required to stop at all railroad grade crossings; exceptions.
6-768 Grade crossings; certain carriers; required to stop; exceptions.
6-769 School bus; safety requirements; use of stop signal arm; use of warning signal lights; violations; penalty.
6-770 Splash aprons; requirements; violation; penalty.
6-771 Towing; drawbars or other connections; length; red flag required, when.
6-772 Horn; requirements; prohibited acts.
6-773 Muffler or noise-suppressing system; prevention of fumes and smoke; requirements.
6-774 Television set; equipping motor vehicle with screen visible to driver; penalty.

Section 6-701 Peace officers; investigation of traffic accident; duty to report; Department of Roads; powers; duties. It shall be the duty of any peace officer who investigates any traffic accident in the performance of his/her official duties in all instances of an accident resulting in injury or death to any person or in which estimated damage exceeds five hundred dollars to the property of any one person to submit an original report of such investigation to the State of Nebraska Accident Records Bureau of the Department of Roads within ten days after each such accident. The department shall have authority to collect accident information it deems necessary and shall prescribe and furnish appropriate forms for reporting. [TCR 86-31, 86-79, 03-172, Same as Neb Rev. Stat. 60-695]

Section 6-702 Motor vehicle; accident; duty to stop; information to furnish; report; violation; penalty. The driver of any vehicle involved in an accident either upon a public highway, private road, or

private drive, resulting in damage to property, shall (1) immediately stop such vehicle at the scene of such accident; and (2) give his name, address, and the registration number of his vehicle and exhibit his operator's or chauffeur's license to the owner of the property struck or the driver or occupants of any other vehicle involved in the collision. Any person violating this Section shall be guilty of a Level II penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-696] **NOTE**: TCR 89-87 changes class of offense.

Section 6-703 Accident; operator's duty; penalty. The driver of any vehicle in an accident upon either a public highway, private road, or private drive, resulting in injury or death to any person, shall (1) immediately stop such vehicle at the scene of such accident; (2) give his name, address, and the registration number of his vehicle and exhibit his operator's or chauffeur's license to the person struck or the driver or occupants of any vehicle collided with; and (3) render to any person injured in such accident reasonable assistance, including the carrying of such person to a physician or surgeon for medical or surgical treatment if it is apparent that such treatment is necessary or is requested by the injured person. Any person violating any of the provisions of this Section shall be guilty of a Level III penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-697] **NOTE**: TCR 89-87 changes class of offense.

Section 6-704 Accidents; reports required of operators and owners; when; supplemental reports; reports of peace officers open to public inspection; limitation on use as evidence; violation; penalty.

1. The operator of any vehicle involved in an accident resulting injuries or death to any person or damage to the property of any one person, including such operator, to an apparent extent of more than five hundred dollars shall forward a report of such accident to the Nebraska Department of Roads in accordance with the requirements of Nebraska Revised Statutes § 60-699.
2. Any person who fails to report an accident as provided in this Section or to correctly give the information required in connection with the report shall be subject to a Level I penalty. [TCR 86-31, 86-79, 03-172, Same as Neb Rev. Stat. 60-699]

Section 6-705 Accidents; reports required of garages and repair shops. The person in charge of any garage or repair shop to which is brought any motor vehicle which shows evidence of having been involved in a serious accident or struck by any bullet shall report to the police station within twenty-four hours after such motor vehicle is received, giving the engine number, the registration number, and the name and address of the owner or operator of such vehicle. A violation of this Section shall be a Level II penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,100]

Section 6-706 Accidents; coroner; report to Nebraska Department of Roads. Any coroner or other official performing the duties of coroner shall report in writing to the Nebraska Department of Roads the death of any person within his or her jurisdiction as the result of an accident involving a motor vehicle and the circumstances of such accident in accordance with Neb Rev. Stat. § 60-6101. Such report by the coroner shall be made within ten days after such death. A violation of this Section shall be a Level II penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,101]

Section 6-707 Accident; death; driver; pedestrian sixteen years or older; coroner; examine body; amount of alcohol or drugs; report to Department of Roads; public information. In the case of a driver who dies within four hours after being in a motor vehicle accident, including a motor vehicle accident in which one or more persons in addition to such driver is killed, and of a pedestrian sixteen years of age or older who dies within four hours after being struck by a motor vehicle, the coroner or other official performing the duties of coroner shall examine the body and cause such tests to be made as are necessary to determine the amount of alcohol or drugs in the body of such driver or pedestrian. Such information shall be included in each report submitted pursuant to Neb Rev. Stat. sections 60-6,101 to

60-6,104 and shall be tabulated on a monthly basis by the Nebraska Department of Roads. Such information, including the identity of the deceased and any such amount of alcohol or drugs, shall be public information and may be released or disclosed as provided in rules and regulations of the department. A violation of this Section shall be a Level II penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,102]

Section 6-708 Accident; driver or pedestrian sixteen years of age or older; person killed; submit to chemical test; results in writing to Director-State Engineer; public information. Any surviving driver or pedestrian sixteen years of age or older who is involved in a motor vehicle accident in which a person is killed shall be requested, if he/she has not otherwise been directed by a peace officer to submit to a chemical test under Section 6-433, to submit to a chemical test of blood, urine, or breath as the peace officer directs for the purpose of determining the amount of alcohol or drugs in his or her body fluid. The results of such test shall be reported in writing to the Nebraska Director-State Engineer who shall tabulate such results on a monthly basis. Such information, including the identity of such driver or pedestrian and any such amount of alcohol or drugs, shall be public information and may be released or disclosed as provided in rules and regulations of the Nebraska Department of Roads. The provisions of Sections 6-434 and 6-435, shall, when applicable, apply to the tests provided for in this Section. A violation of this Section shall be a Level II penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,103]

Section 6-709 Accidents; body fluid; samples; test; report. All samples and tests of body fluids shall be submitted to and performed by an individual possessing a valid permit issued by the Department of Health and Human Services Regulation and Licensure for such purpose. Such tests shall be performed according to methods approved by the department. Such individual shall promptly perform such analysis and report the results thereof to the official submitting the sample. [TCR 86-31, 86-79, 03-172, Same as Neb Rev. Stat. 60-6,104]

Section 6-710 Roadway; removal of dead or injured persons; peace officer. Peace officers or other local authority may remove a dead body or an injured person from any roadway to the nearest available position off the roadway as may be necessary to keep the roadway open or safe for public travel or to any hospital, clinic, or medical doctor as may be necessary to preserve life. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-679]

Section 6-711 Roadways, travel on; regulation by local authorities; when authorized; signs.

1. Local authorities may by ordinance or resolution prohibit the operation of vehicles upon any highway or impose restrictions as to the weight of vehicles, for a total period not to exceed ninety days in any one calendar year, when operated upon any highway under the jurisdiction of and for the maintenance of which such local authorities are responsible whenever any such highway by reason of deterioration, rain, snow, or other climatic condition will be seriously damaged or destroyed unless the use of vehicles thereon is prohibited or the permissible weight thereof reduced. Such local authorities enacting any such ordinance or resolution shall erect or cause to be erected and maintained signs designating the provisions of the ordinance or resolution at each end of that portion of any highway affected thereby, and the ordinance or resolution shall not be effective until such signs are erected and maintained.
2. Local authorities may also, by ordinance or resolution, prohibit the operation of trucks or other commercial vehicles or impose limitations as to the weight thereof on designated highways, which prohibitions and limitations shall be designated by appropriate signs placed on such highways. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-681]

Section 6-712 Display of unauthorized signs, signals, or markings; public nuisance; removal.

1. No person shall place, maintain, or display upon or in view of any highway any unauthorized sign, signal, light, marking, or device which purports to be, is an imitation of, or resembles a lawful traffic control device or railroad sign or signal, which uses the words stop or danger prominently displayed, which implies the need or requirement of stopping or the existence of danger, which attempts to direct the movement of traffic, which otherwise copies or resembles any lawful traffic control device, or which hides from view or interferes with the effectiveness of a traffic control device or any railroad sign or signal.
2. No person shall place or maintain nor shall any public authority permit upon any highway any traffic sign or signal which bears commercial advertising except as otherwise authorized by the Winnebago Tribal Code.
3. This Section shall not be deemed to prohibit the erection upon private property adjacent to highways of signs giving useful directional information and of a type that cannot be mistaken for official signs unless prohibited by another Code provision.
4. Every such prohibited sign, signal, or marking is hereby declared to be a public nuisance, and the authority having jurisdiction over any highway where such prohibited sign, signal, or marking is found may remove it or cause it to be removed without notice.
5. A violation of this Section shall be a Level II penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,127]

Section 6-713 Advertising devices adjacent to highway; when prohibited; public nuisance; removal. No advertising devices shall be erected or operated upon any private property adjacent to or near any highway which:

1. Have a light, the beam of which is concentrated on the highway or adversely affects the vision of operators of vehicles upon the roadway by the use of flashing red, amber, yellow, or green lights which have the very obvious appearance of devices generally used as official traffic control devices.
2. Have photo-flash type lights, flood lights, spotlights, or other lighted signs which use the words Stop or Danger prominently displayed, which imply the need or requirement of stopping or the existence of danger, or which otherwise copy or resemble official traffic control devices.
3. Nothing in this Section shall be construed to apply to official traffic control devices erected by the public agencies having jurisdiction.
4. Any advertising device erected, maintained, or operated in violation of this Section is hereby declared to be a public nuisance. It shall be the duty of the public agency having jurisdiction to notify the owner of all lights in violation of the provisions of this Section, and the public agency may remove such lights if the owner fails or refuses to remove them within a reasonable time after he/she is notified of such violation.
5. A violation of this Section shall be a Level II penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,128]

Section 6-714 Required obedience to traffic laws; private property used for public road by consent of owner; provisions uniform throughout the Reservation.

1. The provisions of the Winnebago Traffic Code relating to operation of vehicles refer exclusively to operation of vehicles upon highways except where a different place is specifically referred to in a given section.
2. Nothing in the Winnebago Traffic Code shall be construed to prevent the owner of real property used by the public for the purposes of vehicular travel, by permission of the owner and not as a

matter of right, from prohibiting such use nor from requiring other, different, or additional conditions from those specified or otherwise regulating the use thereof by such owner.

3. The Winnebago Traffic Code shall be applicable and uniform throughout the Winnebago Reservation. [TCR 86-31, 86-79, 03-172, Same as Neb Rev. Stat. 60-6,108]

Section 6-715 Drivers to exercise due care with pedestrian; audible signal. Notwithstanding the other provisions of the Winnebago Tribal Code, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give an audible signal when necessary and shall exercise proper precaution upon observing any child or obviously confused or incapacitated person upon a roadway. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,109]

Section 6-716 Obedience to peace officers; violation; penalty.

1. Any person who knowingly fails or refuses to obey any lawful order of any peace officer who is controlling or directing traffic shall be guilty of a Level I penalty.
2. Any person who knowingly fails to obey any lawful order of a peace officer shall be guilty of a Level II penalty whenever such order is given in furtherance of the apprehension of a person who has violated the Winnebago Tribal Code or of a person whom such officer reasonably believes has violated the rules. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,110] **NOTE**: The language of subsection (2) has been changed by the Code Specialist to retain the intention of the Winnebago 1989 and Nebraska 1994 amendments.

Section 6-717 Failing to observe a blind person; penalty.

1. A person commits the offense of failing to observe a blind person if, as an operator of any vehicle or other conveyance, he/she fails to:
   a. Give special consideration to the bearer of a white cane or user of a guide dog; and
   b. Stop and remain when approaching such bearer until such time as the bearer has safely reached a position well outside the course normally used by the operator of the vehicle or other conveyance.
2. Failure to observe a blind person is a Level II penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 28-1314]

Section 6-718 Persons riding animals or driving animal-drawn vehicles; farm implements; duties.

1. Any person who rides an animal or drives an animal-drawn vehicle, a farm tractor, or an implement of husbandry upon a roadway shall be granted all of the rights and shall be subject to all of the duties made applicable to the driver of a vehicle by the Winnebago Traffic Code except those provisions of the rules which by their very nature can have no application.
2. Whenever the slowness of such animal, animal-drawn vehicle, farm tractor, or implement of husbandry is obstructing the normal flow of traffic, the rider or driver shall drive to the nearest available shoulder of the highway and allow traffic to pass.
3. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,111]

Section 6-719 Interference with official traffic control devices or railroad signs or signals; prohibited; liability in civil action.

1. No person shall, without lawful authority, attempt to or in fact alter, deface, injure, knock down, or remove any traffic control device, any railroad sign or signal, or any part of such a device, sign, or signal.
2. Any person who moves, alters, damages, or destroys warning devices placed upon roads which any local authority or its representative has closed in whole or in part for the protection of the public or for the protection of the highway from damage during construction, improvement, or maintenance operation and thereby causes injury or death to any person or damage to any property, equipment, or material thereon shall be liable for the full or allocated amount of such death, injury, or damage, and such amount may be recovered by the injured or damaged party or his/her legal representative in a civil action brought in any Court of competent jurisdiction.
3. A violation of this Section shall be a Level II penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,129]

Section 6-720 Signs, markers, devices, or notices; prohibited acts; penalty.

1. Any person who willfully or maliciously shoots upon the public highway and injures, defaces, damages, or destroys any signs, monuments, road markers, traffic control devices, traffic surveillance devices, or other public notices lawfully placed upon such highways shall be guilty of a Level II violation.
2. No person shall willfully or maliciously injure, deface, alter, or knock down any sign, traffic control device, or traffic surveillance device.
3. It shall be unlawful for any person, other than duly authorized authorities to remove any sign, traffic control device, or traffic surveillance device placed along a highway for traffic control, warning, or informational purposes by official action of the department, county, or municipality. It shall be unlawful for any person to possess a sign or device which has been removed in violation of this subsection.
4. Any person violating subsection (2) or (3) of this Section shall be assessed liquidated damages in the amount of the value of the sign, traffic control device, or traffic surveillance device and the cost of replacing it. A violation of this Section shall also be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,130]

Section 6-721 Motor vehicle; motorcycle; lights; requirements; prohibited acts.

1. Every motor vehicle upon a roadway or highway within the Winnebago Reservation during the period from sunset to sunrise and at any other time when there is not sufficient light to render clearly discernible persons or vehicles upon the highway at a distance of five hundred feet ahead shall be equipped with lighted headlights and taillights as respectively required in this Section for different classes of vehicles.
2. Every motor vehicle, other than a motorcycle, a road roller, or road machinery, shall be equipped with two or more headlights, at the front of and on opposite sides of the motor vehicle.
3. Every motor vehicle and trailer, other than a motorcycle, a road roller, or road machinery, shall be equipped with one or more taillights, at the rear of the motor vehicle or trailer, exhibiting a red light visible from a distance of at least five hundred feet to the rear of such vehicle.
4. Every motorcycle shall be equipped with at least one and not more than two headlights and with a taillight exhibiting a red light visible from a distance of at least five hundred feet to the rear of such motorcycle.
5. The requirement in this Section as to the distance from which lights must render obstructions visible or within which lights must be visible shall apply during the time stated in this Section upon a straight, level, unlighted highway under normal atmospheric conditions.

6. It shall be unlawful for any owner or operator of any motor vehicle to operate such vehicle upon a highway unless:
   a. The condition of the lights and electric circuit is such as to give substantially normal light output;
   b. Each taillight shows red directly to the rear, the lens covering each taillight is unbroken, each taillight is securely fastened, and the electric circuit is free from grounds or shorts;
   c. There is no more than one spotlight except for law enforcement personnel, government employees, and public utility employees;
   d. There are no more than two auxiliary driving lights and every such auxiliary light meets the requirements for auxiliary driving lights provided in Section 6-727;
   e. If equipped with any lighting device, other than headlights, spotlights, or auxiliary driving lights, which projects a beam of light of an intensity greater than twenty-five candlepower, such lighting device meets the requirements of subsection (4) of Section 6-727; and
   f. If equipped with side cowl or fender lights, there are no more than two such lights and each such side cowl or fender light emits an amber or white light.
7. A violation of this Section shall be a Level II penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,219]

Section 6-722 Lights; vehicle being driven. Whenever a motor vehicle is parked or stopped upon a roadway or shoulder adjacent thereto, whether attended or unattended, during the times mentioned in Section 6-721, such vehicle shall be equipped with one or more lights which shall exhibit a light in such color as designated by the local authorities on the roadway side visible from a distance of five hundred feet to the front of such vehicle and a red light visible from a distance of five hundred feet to the rear, except that a local authority may provide by ordinance that no lights need be displayed upon any such vehicle when stopped or parked in accordance with local parking regulations upon a highway where there is sufficient light to reveal any person or obstruction within a distance of five hundred feet upon such highway. Any lighted headlights upon a parked vehicle shall be depressed or dimmed and turn signals shall not be flashed on one side only. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,220]

Section 6-723 Headlights; construction; adjustment; requirements.

1. The headlights of motor vehicles shall be so constructed, arranged, and adjusted that, except as provided in subsection (2) of this Section, they will at all times mentioned in Section 60-6,219 produce a driving light sufficient to render clearly discernible a person two hundred feet ahead, but the headlights shall not project a glaring or dazzling light to persons in front of such headlights.
2. Headlights shall be deemed to comply with the provisions prohibiting glaring and dazzling lights if none of the main bright portion of the headlight beam rises above a horizontal plane passing through the light centers parallel to the level road upon which the loaded vehicle stands and in no case higher than forty-two inches, seventy-five feet ahead of the vehicle. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,221]

Section 6-724 Violations; penalty. Any person who shall violate any of the provisions of Sections 6-737, 6-745, 6-721, 6-723, shall be guilty of a Level I penalty. In the event of such violation, the violator may be required to produce in Court or submit to the prosecuting attorney, satisfactory proof showing that such brake or light equipment, as the case may be, involved in such person's violation, has been made to conform with the requirements of said Sections. The failure to abide by such direction or refusal or neglect of such to conform with the brake equipment or light equipment requirements, as the case may be,

shall be deemed to be an additional offense and the violator shall subject to an additional Level I penalty for failure to comply. [TCR 86-31, 86-79, 89-87, 95-28, 03-172, Same as Neb Rev. Stat. 6,222]

Section 6-725 Acetylene headlights; number; construction; requirements. Motor vehicles may be equipped with two acetylene headlights of approximately equal candlepower when equipped with clear, plain glass fronts, bright six-inch spherical mirrors, and standard acetylene five-eighths-foot burners, no more and no less. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,223]

Section 6-726 Headlights; glare; duty of operator; penalty. Notwithstanding any other provision of the Winnebago Traffic Code:

1. Whenever any person operating a motor vehicle on any roadway or highway in this jurisdiction state meets another person operating a motor vehicle, proceeding in the opposite direction and equipped with headlights constructed and adjusted to project glaring or dazzling light to persons in front of such headlights, upon signal of either person, the other shall dim the headlights of his/her motor vehicle or tilt the beams of glaring or dazzling light projecting therefrom downward so as not to blind or confuse the vision of the operator in front of such headlights; and
2. Whenever any person operating a motor vehicle on any roadway or highway in this jurisdiction state follows another vehicle within two hundred feet to the rear, he/she shall dim the headlights of his/her motor vehicle or tilt the beams of glaring or dazzling light projecting therefrom downward.
3. Any person, firm, or corporation who shall violate any of the provisions of this Section shall be guilty of a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,224]

Section 6-727 Spotlights; auxiliary driving lights; signal lights; other devices; intensity and direction.

1. Any motor vehicle may be equipped with spotlights as specified in Section 6-721, and every lighted spotlight shall be so aimed and used upon approaching another vehicle that no part of the beam will be directed to the left of the center of the highway nor more than one hundred feet ahead of the vehicle.
2. Any motor vehicle may be equipped with not to exceed two auxiliary driving lights mounted on the front at a height not less than twelve inches nor more than forty-two inches above the level surface on which the vehicle stands, and every such auxiliary driving light shall meet the requirements and limitations set forth in Section 6-225. The restrictions on mounting height provided in this subsection shall not apply to any motor vehicle equipped with a blade, plow, or any other device designed for the movement of snow. Auxiliary driving lights shall be turned off at the same time the motor vehicle's headlights are required to be dimmed when approaching another vehicle from either the front or the rear.
3. Whenever a motor vehicle is equipped with a signal light, the signal light shall be so constructed and located on the vehicle as to give a signal which shall be plainly visible in normal sunlight from a distance of one hundred feet to the rear of the vehicle but shall not project a glaring or dazzling light.
4. Any device, other than headlights, spotlights, or auxiliary driving lights, which projects a beam of light of an intensity greater than twenty-five candlepower shall be so directed that no part of the beam will strike the level of the surface on which the vehicle stands at a distance of more than fifty feet from the vehicle.
5. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,225]

Section 6-728 Parking lights; unlawful use. It shall be unlawful for any person to drive on any of the roadways or highways of this jurisdiction with only parking lights turned on. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,227]

Section 6-729 Vehicle proceeding in forward motion; backup lights on; prohibited; violation; penalty. No vehicle shall be operated while proceeding in a forward motion with the backup lights on when the vehicle is being operated on the highways. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,228]

Section 6-730 Lights, red or green, in front of vehicle prohibited; exceptions. Except as provided in Sections 6-731 to 6-733, it shall be unlawful for any person to drive or move any vehicle upon a highway with any red or green light thereon visible from directly in front thereof. This Section shall not apply to police or fire department or fire patrol vehicles or school buses. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,229]

Section 6-731 Lights; rotating or flashing; colored lights; when permitted.

1. Except as provided in Sections 6-731 to 6-733 and subsections (4) and (5) of this Section, no person shall operate any motor vehicle or any equipment of any description on any roadway or highway in this jurisdiction with any rotating or flashing light.
2. Except for stop lights and directional signals, which may be red, yellow, or amber, no person shall display any color of light other than red on the rear of any motor vehicle or any equipment of any kind on any highway within this jurisdiction.
3. Blue and green lights may be displayed on vehicles of the Military Department for purpose of convoy control when on any state emergency mission.
4. A single flashing white light may be displayed on the roof of school transportation vehicles during extremely adverse weather conditions.
5. Blue and amber rotating or flashing lights may be displayed on vehicles used for the movement of snow when operated by the Department of Roads or any local authority.
6. A violation of this Section shall be a Level II penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,230]

Section 6-732 Flashing or rotating lights; emergency vehicles; colors permitted. A flashing or rotating red light or red and white light shall be displayed on any emergency vehicle whenever operated in this jurisdiction. A blue light may also be displayed with such flashing or rotating red light or red and white light. For purposes of this Section, any publicly owned police, fire, or rescue vehicles and publicly or privately owned ambulances and funeral escort vehicles shall be considered to be emergency vehicles. A violation of this Section shall be a Level III penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,231]

Section 6-733 Rotating or flashing amber light; when permitted.

1. A rotating or flashing amber light or lights shall be displayed on the roof of any motor vehicle being operated by any rural mail carrier outside the corporate limits of any municipality in this state on or near any highway in the process of delivering mail.
2. A rotating or flashing amber light or lights may be displayed on (a) any vehicle of the Military Department while on any state emergency mission; (b) any motor vehicle being operated by any public utility, vehicle service, or towing service or any publicly or privately owned construction or maintenance vehicle while performing its duties on or near any highway; (c) any motor vehicle being operated by any member of the Civil Air Patrol; (d) any pilot vehicle escorting an over-

dimensional load; or (e) any vehicle while actually engaged in the moving of houses, buildings, or other objects of extraordinary bulk.

3. A violation of this Section shall be a Level III penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,232]

Section 6-734 Rotating or flashing red light or red and blue lights; when permitted; application; permit; expiration.

1.
   a. A rotating or flashing red light or lights or such light or lights in combination with a blue light or lights may be displayed on any motor vehicle operated by any volunteer firefighter or peace officer anywhere in this state while actually en route to the scene of a fire or other emergency requiring his/her services as a volunteer firefighter or peace officer but only after its use has been authorized in writing by the county sheriff.
   b. Application for a permit to display such light shall be made in writing to the sheriff on forms to be prescribed and furnished by the Nebraska Superintendent of Law Enforcement and Public Safety. The application shall be accompanied by a statement that the applicant is a volunteer firefighter or peace officer and is requesting issuance of the permit. The statement shall be signed by the applicant's superior.
   c. The permit shall be carried at all times in the vehicle named in the permit. Each such permit shall expire on December 31 of each year and shall be renewed in the same manner as it was originally issued.
   d. The sheriff may at any time revoke such permit upon a showing of abuse thereof or upon receipt of notice from the applicant's superior that the holder thereof is no longer an active volunteer firefighter or peace officer. Any person whose permit has been so revoked shall upon demand surrender it to the sheriff or his or her authorized agent.
2. A rotating or flashing red light or lights or such light or lights in combination with a blue light or lights may be displayed on any motor vehicle being used by rescue squads actually en route to, at, or returning from any emergency requiring their services, or by any privately owned wrecker when engaged in emergency services at the scene of an accident, or at a disabled vehicle, located outside the city limits of a city of the metropolitan or primary class, but only after its use has been authorized in writing by the county sheriff. Applications shall be made and may be revoked in the same manner as for volunteer firefighters as provided in subsection (1) of this Section.
3. A violation of this Section shall be a Level III penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,233]

Section 6-735 Rotating or flashing lights; violation; penalty. Any person who violates any provision of Sections 6-730 to 6-734 shall be subject to a Level III penalty and shall also be ordered to remove from any vehicle or equipment any light found to be in violation of such sections. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,234]

Section 6-736 Clearance lights; requirements; substitution; violations; penalty.

1. Every vehicle, including road rollers, road machinery, combines, farm machinery, wagons, racks, and farm tractors, (a) having a width, including load, of eighty inches or more or (b) having any part thereof or having any load thereupon which extends forty inches or more to the left of the center of the chassis shall display, when driven, pulled, operated, or propelled upon any highway during the period from sunset to sunrise and at all other times when there is not sufficient light to render such vehicle clearly discernible, two clearance lights on the left side of such vehicle.
2. One clearance light shall be located at the front and display an amber light which is visible, under normal atmospheric conditions, from a distance of three hundred feet to the front of such vehicle.

The other clearance light shall be located at the rear and display a red light which is visible, under normal atmospheric conditions, from a distance of three hundred feet to the rear of the vehicle. The light at the rear shall be so located as not to be confused with the taillight by those approaching from the rear.

3. Such lights shall be located on a line with the extreme outer point of such vehicle or the load on the vehicle. The installation of the lights shall be made in such a manner that no hazard will be created by their use on the highway.
4. Suitable reflectors of like color and equal visibility may be substituted for such clearance lights.
5. Any person who violates any provision of this Section shall be subject to a Level I penalty. In the event of such a violation, as part of the penalty, the person may be directed to produce in Court or submit to the prosecuting attorney satisfactory proof showing that the light equipment involved in the person's violation has been made to conform with the requirements of this Section. The failure, refusal, or neglect of the violator to abide by such direction shall be deemed an additional offense for which the person shall be subject for an additional Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,235]

Section 6-737 Vehicles required to have clearance lights; flares; reflectors; when required as equipment. Any vehicle required by Section 6-736 to have clearance lights, while operating on the highways during the period from sunset to sunrise, shall at all times be equipped with at least three portable flares, or red emergency reflectors referred to in Section 6-738, which may be plainly visible for a distance of five hundred feet. A violation of this Section shall be a Level II penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,236]

Section 6-738 Vehicles required to have clearance lights; flares; reflectors; how and when displayed. The operator of any vehicle required by Section 6-736 to have clearance lights shall, immediately upon bringing his/her vehicle to a stop upon or immediately adjacent to the traveled portion of the highway at any time during the period from sunset to sunrise, (1) place one lighted flare or one red emergency reflector at the side of such vehicle just inside the white line marking the center of paved highways and near the center of dirt or gravel highways; (2) place one lighted flare or one red emergency reflector approximately one hundred feet to the rear of such vehicle; and (3) place one lighted flare or one red emergency reflector approximately one hundred feet to the front of such vehicle. The operator shall maintain such lighted flares or red emergency reflectors in such positions during the time such vehicle remains parked, except that motor vehicles transporting flammables shall be required to use two flares or two red emergency reflectors to be placed as described in this Section to the front and rear but shall not be permitted to place open flame flares adjacent to such vehicles. [TCR 86-31, 86-79, 03-172, Same as Neb Rev. Stat. 60-6,237]

Section 6-739 Vehicles; red flags; red emergency reflectors; when required as equipment; how and when displayed.

1. Except as provided in subsection (2) of this Section, between one-half hour before sunrise and one-half hour after sunset, any vehicle described in Section 6-737 shall be equipped with two red flags, and when the vehicle is parked, one flag shall be placed one hundred feet behind and the other one hundred feet ahead of such vehicle and in such position as to be visible to all approaching traffic during the daylight hours.
2. In lieu of the requirements of subsection (1) of this Section, such a vehicle may be equipped with three red emergency reflectors. One of the reflectors shall be placed alongside the vehicle on the traffic side and within ten feet of the front or rear of the vehicle. When there is two-way traffic, one reflector shall be placed one hundred feet ahead of the vehicle and one shall be placed one hundred feet behind the vehicle. When there is only one-way traffic, one reflector shall be placed one hundred feet and one two hundred feet behind the vehicle.

3. A violation of this Section shall be a Level II penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,238]

Section 6-740 Clearance lights, flares, and reflector requirements; violations; penalty. Any person who violates any provision of Sections 6-737 to 6-739 shall be subject to a Level II penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,239]

Section 6-741 Removing flares or flags; penalty. Any person who willfully removes any flares or red flags placed upon the highways under the provisions of Sections 6-737 to 6-739 before the driver of such vehicle is ready to proceed immediately on the highway shall be subject to a Level II penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,240]

Section 6-742 Vehicles; slow moving; emblem required; when used.

1. It shall be unlawful for any person to operate on the roadway of any highway any slow-moving vehicle or equipment, any animal-drawn vehicle, or any other machinery, designed for use at speeds less than twenty-five miles per hour, including all road construction or maintenance machinery except when engaged in actual construction or maintenance work either guarded by a flag person or clearly visible warning signs, which normally travels or is normally used at a speed of less than twenty-five miles per hour unless there is displayed on the rear thereof an emblem as described in and displayed as provided in subsection (2) of this Section. The requirement of such emblem shall be in addition to any lighting devices required by law. The emblem shall not be displayed on objects which are customarily stationary in use except while being transported on the roadway of any highway.
2. The emblem shall be of substantial construction and shall be a base-down equilateral triangle of fluorescent yellow-orange film with a base of fourteen inches and an altitude of twelve inches. Such triangle shall be bordered with reflective red strips having a minimum width of one and three-fourths inches, with the vertices of the overall triangle truncated such that the remaining altitude shall be a minimum of fourteen inches. The emblem shall comply with the current standards and specifications for slow-moving vehicle emblems of the American Society of Agricultural Engineers. Such emblem shall be mounted on the rear of such vehicle at a height of two to six feet above the roadway and shall be maintained in a clean, reflective condition. This Section shall not apply to an electric personal assistive mobility device.
3. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,241]

Section 6-743 Vehicles; slow moving; emblem; how equipped; penalty. All vehicles, equipment, or machinery sold in the State of Nebraska after January 1, 1968, and required to display the emblem provided for in Section 6-742, shall be equipped with a bracket on which such emblem may be mounted. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,242] **NOTE**: TCR 89-87 adds penalty.

Section 6-744 Load projecting to rear; red flag or red light required. Whenever the load on any vehicle extends more than four feet beyond the rear of the bed or body thereof, there shall be displayed at the end of such load in such position as to be clearly visible at all times from the rear of such load a red flag not less than twelve inches both in length and width, except that between sunset and sunrise, there shall be displayed at the end of any such load a red light plainly visible under normal atmospheric conditions at least two hundred feet from the rear of such vehicle. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,243]

Section 6-745 Motor vehicles; brakes; requirements.

1. Every motor vehicle when operated upon a highway shall be equipped with brakes adequate to control the movement of and to stop and to hold such vehicle, including two separate means of applying the brakes, each of which means shall be effective to apply the brakes to at least two wheels and so constructed that no part which is liable to failure shall be common to the two, except that a motorcycle shall be required to be equipped with only one brake. All such brakes shall be maintained at all times in good working order.
2. It shall be unlawful for any owner or operator of any motor vehicle, other than a motorcycle, to operate such motor vehicle upon a highway unless the brake equipment thereon qualifies with regard to maximum stopping distances from a speed of twenty miles per hour on dry asphalt or concrete pavement free from loose materials as follows:
   a. Two-wheel brakes, maximum stopping distance, forty feet;
   b. Four or more wheel brakes, vehicles up to seven thousand pounds gross weight, maximum stopping distance, thirty feet;
   c. Four or more wheel brakes, vehicles seven thousand pounds or more gross weight, maximum stopping distance, thirty-five feet;
   d. All hand, parking, or emergency brakes, vehicles up to seven thousand pounds gross weight, maximum stopping distance, fifty-five feet; and
   e. All hand, parking, or emergency brakes, vehicles seven thousand pounds or more gross weight, maximum stopping distance, sixty-five feet.
3. All braking distances specified in this Section shall apply to all vehicles whether unloaded or loaded to the maximum capacity permitted by law.
4. The retarding force of one side of the vehicle shall not exceed the retarding force on the opposite side so as to prevent the vehicle stopping in a straight line.
5. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,244]

Section 6-746 Trailers; brake requirements; safety chains; when required.

1. All commercial trailers with a carrying capacity of more than ten thousand pounds and semi-trailers shall be equipped on each wheel with brakes that can be operated from the driving position of the towing vehicle.
2. Cabin trailers and recreational trailers having a gross loaded weight of three thousand pounds or more but less than six thousand five hundred pounds shall be equipped with brakes on at least two wheels, and such trailers with a gross loaded weight of six thousand five hundred pounds or more shall be equipped with brakes on each wheel. The brakes shall be operable from the driving position of the towing vehicle. Such trailers shall also be equipped with a breakaway, surge, or impulse switch on the trailer so that the trailer brakes are activated if the trailer becomes disengaged from the towing vehicle. For purposes of this subsection, recreational trailer shall mean a vehicular unit without motive power primarily designed for transporting a motorboat or vessel.
3. Cabin trailers, recreational trailers, and utility trailers, when being towed upon a highway, shall be securely connected to the towing vehicle by means of two safety chains or safety cables in addition to the hitch or other primary connecting device. Such safety chains or safety cables shall be so attached and shall be of sufficient breaking load strength so as to prevent any portion of such trailer drawbar from touching the roadway if the hitch or other primary connecting device becomes disengaged from the towing vehicle.
4. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,246]

Section 6-747 Trucks and buses; brake requirements; violation; penalty. It shall be unlawful for any person to operate or cause to be operated on the highways buses or trucks having a gross weight of the truck and load exceeding twelve thousand pounds unless such bus or truck is equipped with power brakes, auxiliary brakes, or some standard booster brake equipment. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,247]

Section 6-748 Hydraulic brake fluids; requirements; violation; penalty. In order to promote highway safety by providing the public with safe and efficient hydraulic fluids for motor vehicle braking systems, it shall be unlawful for any person to sell, offer to sell, or display for sale any hydraulic fluids for use in motor vehicle braking systems that do not equal or exceed the specifications for types SAE 70R1 or SAE 70R3 brake fluids as set forth in 49 C.F.R. 571.116. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,248]

Section 6-749 Tires; requirements; cleats or projections prohibited; exceptions; permissive uses; special permits; exceptions.

1. Every solid rubber tire on a vehicle moved on any highway shall have rubber on its entire traction surface at least one inch thick above the edge of the flange of the entire periphery.
2. No tire on a vehicle moved on a highway shall have on its periphery any clock, stud, flange, cleat, or spike or any other protuberance of any material other than rubber which projects beyond the tread of the traction surface of the tire, except that:
    a. This prohibition shall not apply to pneumatic tires with metal or metal-type studs not exceeding five-sixteenths of an inch in diameter inclusive of the stud-casing with an average protrusion beyond the tread surface of not more than seven sixty-fourths of an inch between November 1 and April 1, except that school buses, mail carrier vehicles, and emergency vehicles shall be permitted to use metal or metal-type studs at any time during the year;
    b. It shall be permissible to use farm machinery with tires having protuberances which will not injure the highway; and
    c. It shall be permissible to use tire chains of reasonable proportions upon any vehicle when required for safety because of snow, ice, or other condition tending to cause a vehicle to slide or skid.
3. No person shall operate or move on any highway any motor vehicle, trailer, or semi-trailer (a) having any metal tire in contact with the roadway or (b) equipped with solid rubber tires, except that this subsection shall not apply to farm vehicles having a gross weight of ten thousand pounds or less or to implements of husbandry.
4. Local authorities in their respective jurisdictions may, in their discretion, issue special permits authorizing the operation upon a highway of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of such movable tracks or farm tractors or other farm machinery.
5. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,250]

Section 6-750 Trucks; rearview mirror. Each truck shall be equipped with a rearview mirror which shall be kept clean, repaired, and installed. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,253]

Section 6-751 Operator; view to rear required; outside mirrors authorized. No person shall drive a motor vehicle, other than a motorcycle, on a highway when the motor vehicle is so constructed or loaded as to prevent the driver from obtaining a view of the highway to the rear by looking backward from the driver's position unless such vehicle is equipped with a right-side and a left-side outside mirror so located

as to reflect to the driver a view of the highway for a distance of at least two hundred feet to the rear of such vehicle. Temporary outside mirrors and attachments used when towing a vehicle shall be removed from such motor vehicle or retracted within the outside dimensions thereof when it is operated upon the highway without such trailer. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,254]

Section 6-752 Windshield and windows; nontransparent material prohibited; windshield equipment; requirements.

1. Every motor vehicle registered pursuant to the laws of the State of Nebraska, except motorcycles, shall be equipped with a front windshield.
2. It shall be unlawful for any person to drive any vehicle upon a highway with any sign, poster, or other nontransparent material upon the front windshield, side wing vents, or side or rear windows of such motor vehicle other than a certificate or other paper required to be so displayed by law. The front windshield, side wing vents, and side or rear windows may have a visor or other shade device which is easily moved aside or removable, is normally used by a motor vehicle operator during daylight hours, and does not impair the driver's field of vision.
3. Every windshield on a motor vehicle, other than a motorcycle, shall be equipped with a device for cleaning rain, snow, or other moisture from the windshield, which device shall be so constructed as to be controlled or operated by the driver of the vehicle.
4. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,255]

Section 6-753 Safety glass, defined. For purposes of Section 6-754, safety glass shall mean any product composed of glass or such other or similar products as will successfully withstand discoloration due to exposure to sunlight or abnormal temperatures over an extended period of time and is so manufactured, fabricated, or treated as substantially to prevent or reduce in comparison with ordinary sheet glass or plate glass, when struck or broken, the likelihood of injury to persons. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,262]

Section 6-754 Safety glass; requirements; vehicles built after January 1, 1935; motorcycle windshield; requirements; violation; penalty. It shall be unlawful to operate on any highway any motor vehicle, other than a motorcycle, manufactured or assembled after January 1, 1935, which is designed or used for the purpose of carrying passengers unless such vehicle is equipped in all doors, windows, and windshields with safety glass. Any windshield attached to a motorcycle shall be manufactured of products which will successfully withstand discoloration due to exposure to sunlight or abnormal temperatures over an extended period of time. The owner or operator of any motor vehicle operated in violation of this Section is subject to a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,263]

Section 6-755 Violation by common carrier; permit revoked or suspended. In case of any violation of Section 6-754 by any common carrier or person operating a motor vehicle under a permit issued by the Director of Motor Vehicles, the Public Service Commission, or any other authorized body or officer, such permit shall be revoked or, in the discretion of such authorized department, commission, body, or officer, suspended until the provisions of such Section are satisfactorily complied with. [TCR 86-31, 86-79, 03-172, Same as Neb Rev. Stat. 60-6,264]

Section 6-756 Occupant protection systems. For purposes of Sections 6-757 to 6-762, occupant protection system shall mean a system utilizing a lap belt, a shoulder belt, or any combination of belts installed in a motor vehicle which (1) restrains drivers and passengers and (2) conforms to Federal Motor Vehicle Safety Standards, 49 C.F.R. 571.208, 571.209, and 571.210, or to the federal motor vehicle safety

standards for passenger restraint systems applicable for the motor vehicle's model year. [TCR 95-06, 03-172, Same as Neb Rev. Stat. 60-6,265]

Section 6-757 Occupant protection system; 1973 year model and later motor vehicles; requirements; violation; penalty. Every motor vehicle designated by the manufacturer as 1973 year model or later operated on any highway, road, or street in this jurisdiction, except farm tractors and implements of husbandry designed primarily or exclusively for use in agricultural operations, motorcycles, motor-driven cycles, mopeds, and buses, shall be equipped with an occupant protection system of a type which:

1. Meets the requirements of 49 C.F.R. 571.208, 571.209, and 571.210 as such regulations currently exist or as the regulations existed when the occupant protection system was originally installed by the manufacturer; or
2. If the occupant protection system has been replaced, meets the requirements of 49 C.F.R. 571.208, 571.209, and 571.210 that applied to the originally installed occupant protection system or of a more recently issued version of such regulations. The purchaser of any such vehicle may designate the make or brand of or furnish such occupant protection system to be installed. Any person selling a motor vehicle in this state not in compliance with this Section shall be subject to a Level I penalty. [TCR 95-06, 03-172, Same as Neb Rev. Stat. 60-6,266]

Section 6-758 Child passenger; use restraint system or occupant protection system; when; information and education program.

1. Any person who resides in this jurisdiction and drives any motor vehicle which has or is required to have an occupant protection system shall ensure that:
   a. All children up to six years of age being transported in such vehicle use a child passenger restraint system of a type which meets Federal Motor Vehicle Safety Standard 213 as developed by the National Highway Traffic Safety Administration as of July 10, 1990, and which is correctly installed in such vehicle; and
   b. All children six years of age and less than eighteen being transported in such vehicle use an occupant protection system. This subsection shall apply to every motor vehicle which is equipped with an occupant protection system or is required to be equipped with restraint systems pursuant to Federal Motor Vehicle Safety Standard 208 except taxi-cabs, mopeds, motorcycles, and any motor vehicle designated by the manufacturer as a 1963 year model or earlier which is not equipped with an occupant protection system.
2. Whenever any physician licensed to practice medicine in Nebraska determines, through accepted medical procedures, that use of a child passenger restraint system by a particular child would be harmful by reason of child's weight, physical condition, or other medical reason, the provisions of subsection (1) of this Section shall be waived. The driver of any vehicle transporting such a child shall carry on his or her person or in the vehicle a signed written statement of the physician identifying the child and stating the grounds for such waiver.
3. The drivers of authorized emergency vehicles shall not be subject to the requirements of subsection (1) of this Section when operating such authorized emergency vehicles pursuant to their employment.
4. The Environmental Health shall develop and implement an ongoing public information and education program regarding the use of child passenger restraint systems and occupant protection systems. [TCR 95-06, 03-172, 60-48, Same as Neb Rev. Stat. 60-6,267]

Section 6-759 Child passenger restraint requirements; violations; penalty; defense.

1. A person violating any provision of subsection (1) of Section 6-758 shall be guilty of an infraction. The failure to provide a child restraint system for more than one child in the same vehicle at the same time, as required in such subsection, shall not be treated as a separate offense. Any person who violates such subsection, who does not have in his or her possession a child restraint system meeting the requirements of Federal Motor Vehicle Safety Standard 213 as of August 26, 1983, and who subsequently purchases or rents for one-year period such a system prior to the date the penalty is due to be paid, upon presentation of proof of purchase or proof of rental for a one-year period of such a system, be able to utilize such presentation as an absolute defense and cause for dismissal of such penalty.
2. A person who has acquired the statement authorized by subsection (2) of Section 6-758, but fails to show a peace officer such statement when requested to do so, shall be guilty of an infraction. The failure to produce a statement for more than one child in the same vehicle at the same time shall not be treated as a separate offense. [TCR 95-06, 03-172, 06-48, Same as Neb Rev. Stat. 60-6,268]

Section 6-760 Violation of child passenger restraint requirements; how construed. Violations of the provisions of Sections 6-758 and 6-759 shall not constitute prima facie evidence of negligence nor shall compliance with such sections constitute a defense to any claim for personal injuries to a child or recovery of medical expenses for injuries sustained in any motor vehicle accident. Violation of such sections by a driver shall not constitute a defense for another person to any claim for personal injuries to a child or recovery of medical expenses for injuries sustained in any motor vehicle accident. [TCR 95-06, 03-172, Same as Neb Rev. Stat. 60-6,269]

Section 6-761 Occupant protection system; use required; when; exceptions.

1. Except as provided in subsection (2) of this Section, no driver shall operate a motor vehicle upon a highway or street in this state unless the driver and each front-seat occupant in the vehicle are wearing occupant protection systems and all occupant protection systems worn are properly adjusted and fastened.
2. The following persons shall not be required to wear an occupant protection system:
   a. A person who possesses written verification from a physician that the person is unable to wear an occupant protection system for medical reasons;
   b. A rural letter carrier of the United States Postal Service while performing his or her duties as a rural letter carrier between the first and last delivery points; and
   c. A member of an ambulance or rescue service unit while involved in patient care.
3. For purposes of this Section, motor vehicle shall mean a vehicle required by Section 6-757 to be equipped with an occupant protection system. [TCR 95-06, 03-172, Same as Neb Rev. Stat. 60-6,270]

Section 6-762 Enforcement of occupant protection system requirements; when. Enforcement of Sections 6-758 and 6-761 by Tribal law enforcement agencies shall be accomplished as a primary action when a police officer suspects persons are not properly restrained in a moving vehicle. [TCR 95-06, 03-172, 06-48, Same as Neb Rev. Stat. 60-6,271]

Section 6-763 Occupant protection system; violation; penalty. Any person who violated Section 6-761 shall be subject to an infraction. Regardless of the number of persons in such vehicle not wearing an occupant protection system pursuant to such section, only one violation shall be assessed against the driver of such motor vehicle for each time the motor vehicle is stopped and a violation of such section is found. [TCR 95-06, 03-172, 06-48, Same as Neb Rev. Stat. 60-6,272]

Section 6-764 Occupant protection system violation; evidence; when admissible. Evidence that a person was not wearing an occupant protection system at the time he or she was injured shall not be admissible in regard to the issue of liability or proximate cause but may be admissible as evidence concerning litigation of damages, except that it shall not reduce recovery for damages by more than five percent. [TCR 95-06, 03-172, Same as Neb Rev. Stat. 60-6,273]

Section 6-765 Limitations on backing vehicles.

1. The driver of a vehicle shall not back such vehicle on any roadway unless such movement can be made with safety and without interfering with other traffic.
2. The driver of a vehicle shall not back such vehicle upon any roadway or shoulder of any highway.
3. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,169]

Section 6-766 Obedience to signal indicating approach of train; prohibited acts.

1. Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances set forth in this Section, the driver of such vehicle shall stop within fifty feet but not less than fifteen feet from the nearest rail of such railroad and shall not proceed until he/she can do so safely. The requirements of this subsection shall apply when:
   a. A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train;
   b. A crossing gate is lowered or a flag person gives or continues to give a signal of the approach or passage of a railroad train;
   c. A railroad train approaching within approximately one-quarter mile of the highway crossing emits a signal audible from such distance and such railroad train, by reason of its speed or nearness to such crossing, is an immediate hazard; or
   d. An approaching railroad train is plainly visible and is in hazardous proximity to such crossing.
2. No person shall drive any vehicle through, around, or under any crossing gate or barrier at a railroad crossing while such gate or barrier is closed or is being opened or closed.
3. A violation of this Section shall be a Level III penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,170]

Section 6-767 Buses and school buses required to stop at all railroad grade crossings; exceptions.

1. The driver of any bus carrying passengers for hire or of any school bus, before crossing at grade any track of a railroad, shall stop such vehicle within fifty feet but not less than fifteen feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train and for signals indicating the approach of a train, except as otherwise provided in the Winnebago Traffic Code. The driver shall not proceed until he/she can do so safely. After stopping as required by this Section and upon proceeding when it is safe to do so, the driver of any such vehicle shall cross only in such gear of the vehicle that there will be no necessity for changing gears while traversing such track and the driver shall not shift gears while crossing such track.
2. No stop shall be made at any such crossing when a peace officer or a flag person directs traffic to proceed or at an abandoned or exempted grade crossing which is clearly marked as such by or with the consent of competent authority when such markings can be read from the driver's position.

3. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,172]

Section 6-768 Grade crossings; certain carriers; required to stop; exceptions.

1. The driver of any vehicle which is required to be placarded before crossing at a grade any track of a railroad on streets and highways, shall stop such vehicle not more than fifty feet nor less than fifteen feet from the nearest rail or railroad and while stopped shall listen and look in both directions along the track for an approaching train. The driver shall not proceed until precaution has been taken to ascertain that the course is clear.
2. The requirements of subsection (1) of this Section shall not apply:
   a. When a peace officer or a flag person directs traffic to proceed;
   b. At an abandoned or exempted grade crossing which is clearly marked as such by or with the consent of competent authority when such markings can be read from the driver's position; or
   c. At railroad tracks used exclusively for industrial switching purposes within a business district.
3. Nothing in this Section shall be deemed to exempt the driver of any vehicle from compliance with the other requirements contained in the Winnebago Traffic Code.
4. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,173]

Section 6-769 School bus; safety requirements; use of stop signal arm; use of warning signal lights; violations; penalty.

1. Upon meeting or overtaking, from the front or rear, any school bus on which the stop warning signal lights are flashing, the driver of a motor vehicle shall reduce the speed of such vehicle to not more than twenty-five miles per hour, shall bring such vehicle to a complete stop when the school bus stop signal arm is extended, and shall remain stopped until the stop signal arm is retracted and the school bus resumes motion or until signaled by the bus driver to proceed. This Section shall not apply to approaching traffic in the opposite direction on a divided highway or to approaching traffic when there is displayed a sign as provided in subsection (7) of this Section directing traffic to proceed. Any person violating this subsection shall be guilty of a Level III penalty.
2. Except as provided in subsection (7) of this Section, the driver of any school bus, when stopping to receive or discharge pupils, shall turn on flashing stop warning signal lights at a distance of not less than three hundred feet when inside the corporate limits of any city or village and not less than five hundred feet nor more than one thousand feet in any area outside the corporate limits of any city or village from the point where such pupils are to be received or discharged from the bus. At the point of receiving or discharging pupils, the bus driver shall bring the school bus to a stop and extend a stop signal arm. After receiving or discharging pupils, the bus driver shall turn off the flashing stop warning signal lights, retract the stop signal arm, and then proceed on the route. No school bus shall stop to load or unload pupils unless there is at least four hundred feet of clear vision in each direction of travel.
3. All pupils shall be received and discharged from the right front entrance of every school bus. If such pupils must cross a roadway, the bus driver shall instruct such pupils to cross in front of the school bus and the bus driver shall keep such school bus halted with the flashing stop warning signal lights turned on and the stop signal arm extended until such pupils have reached the opposite side of such roadway.
4. The driver of a vehicle upon a divided highway need not stop upon meeting or passing a school bus which is on a different roadway or when upon a freeway and such school bus is stopped in a

loading zone which is a part of or adjacent to such highway and where pedestrians are not permitted to cross the roadway.

5. Every school bus shall bear upon the front and rear thereof plainly visible signs containing the words school bus in letters not less than eight inches high.
6. When a school bus is being operated upon a highway for purposes other than the actual transportation of children either to or from school, all markings thereon indicating school bus shall be covered or concealed. The stop signal arm and system of alternately flashing stop warning signal lights shall not be operable through the usual controls.
7. When a school bus is (a) parked in a designated school bus loading area which is out of the flow of traffic and which is adjacent to a school site or (b) parked on a roadway which possesses more than one lane of traffic flowing in the same direction and which is adjacent to a school site, the bus driver shall engage only the flashing stop warning signal lights when receiving or discharging pupils if a school bus loading area warning sign is displayed. Such signs shall not be directly attached to any school bus but shall be free standing and placed at the rear of a parked school bus or line of parked school buses.
8. A violation of this Section shall be a Level III penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,175]

Section 6-770 Splash aprons; requirements; violation; penalty. Every new motor vehicle or semi-trailer purchased after January 1, 1956, and operated on any highway in this jurisdiction shall be equipped with fenders, covers, or devices, including flaps or splash aprons, unless the body of the vehicle affords adequate protection to effectively minimize the spray or splash of water or mud to the rear of the motor vehicle or semi-trailer. Any person violating the provisions of this Section shall be subject to a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,283] **NOTE**: TCR 89-87 adds class of offense.

Section 6-771 Towing; drawbars or other connections; length; red flag required, when. The drawbar or other connection between any two vehicles, one of which is towing or drawing the other on a highway, shall not exceed fifteen feet in length from one vehicle to the other, except a vehicle being towed with a connection device that is an integral component of the vehicle and is designed to attach to a lead unit with construction in such a manner as to allow articulation at the attachment point on the chassis of the towed vehicle but not to allow lateral or side-to-side movement. Such connecting device shall meet the safety standards for towbar failure or disconnection in the Federal Motor Carrier Safety Regulations and shall have displayed at approximately the halfway point between the towing vehicle and the towed vehicle on the connecting mechanism a red flag or other signal or cloth not less than twelve inches both in length and width that shall be at least five feet and not more than ten feet from the level of the paving and shall be displayed along the outside line on both sides of the towing and towed vehicles. Whenever such connection consists of a chain, rope, or cable, there shall be displayed upon such connection a red flag or other signal or cloth not less than twelve inches both in length and width. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,284]

Section 6-772 Horn; requirements; prohibited acts. Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order capable of emitting sound audible under normal conditions from a distance of not less than two hundred feet. Except as otherwise provided in this Section, it shall be unlawful for any vehicle to be equipped with or for any person to use upon a vehicle any siren, exhaust, compression, or spark plug whistle or for any person at any time to use a horn, otherwise than as a reasonable warning, or to make any unnecessary or unreasonably loud or harsh sound by means of a horn or other warning device. Every police and fire department and fire patrol vehicle and every ambulance used for emergency calls shall be equipped with a bell, siren, or exhaust whistle. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,285]

Section 6-773 Muffler or noise-suppressing system; prevention of fumes and smoke; requirements. Every vehicle shall be equipped, maintained, and operated so as to prevent excessive or unusual noise. No person shall drive a motor vehicle on a highway unless such motor vehicle is equipped with a muffler or other effective noise-suppressing system in good working order and in constant operation. It shall be considered a violation to use a muffler cutout, bypass, or similar device on any motor vehicle upon a highway. The engine and power mechanism of every motor vehicle shall be so equipped and adjusted as to prevent the escape of excessive fumes or smoke. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,286]

Section 6-774 Television set; equipping motor vehicle with screen visible to driver; penalty. It shall be a violation of this Section to operate upon any public highway within this jurisdiction a motor vehicle which is equipped with or in which is located a television set so placed that the viewing screen is visible to the driver while operating such vehicle. Any person violating this Section shall be subject to a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,287]

TITLE 6
ARTICLE 8
MISCELLANEOUS

6-801 Motor vehicle owner or operator; liability to guest passenger; limitation.
6-802 Leased trucks, truck-tractors, and trailers; liability of owner for damages.
6-803 Operating a motor vehicle or a vessel to avoid arrest; penalty.
6-804 Winnebago Traffic Code; applicability to persons operating motorcycles.
6-805 Restrictions on operating motorcycles.
6-806 Operating motorcycles on roadways laned for traffic; prohibited acts.
6-807 Moped; operation; license or permit; required.
6-808 Moped; operator; Winnebago Traffic Code; applicable.
6-809 Moped; restrictions on operation.
6-810 Operating mopeds on roadways laned for traffic; prohibited acts.
6-811 Winnebago Traffic Code; applicability to persons operating bicycles.
6-812 Riding of bicycles; prohibited acts.
6-813 Bicycles on roadways and bicycle paths; general rules; regulation by local authority.
6-814 Equipment on bicycles; lights; brakes.
6-815 Bicycles; reflective device or material; retail sale; requirements; violation; penalty.
6-816 All-terrain vehicle, defined.
6-817 All-terrain vehicle; operation.
6-818 All-terrain vehicle; lights required; when.
6-819 All-terrain vehicle; equipment required.
6-820 Modification of all-terrain vehicle; prohibited.
6-821 All-terrain vehicle; competitive events; exemptions.
6-822 All-terrain vehicle; accident; report required.
6-823 Snowmobiles; registration required.
6-824 Snowmobile operation; equipment; permission of landowner.
6-825 Snowmobile contests; requirements.
6-826 Snowmobiles; prohibited acts.
6-827 Snowmobile; operation; muffler, when required.
6-828 Operation by person under twelve years of age; operation by a person under sixteen; restrictions; snowmobile safety certificate.
6-829 Snowmobile owner; prohibited acts.
6-830 Snowmobiles; carrying firearms; hunting; unlawful.
6-831 Snowmobile; confiscation; sale; proceeds; disposition.
6-832 Snowmobile operation; accident; requirements.
6-833 Legislative intent.
6-834 Minibikes; operation; violations; penalty; unlawful acts.
6-835 Radar transmission device; definitions.
6-836 Radar transmission device; operation; possession; unlawful; violation; penalty.
6-837 Authorized devices.
6-838 Prohibited device; seizure; disposal.
6-839 Abandoned motor vehicle, defined.
6-840 Abandoned motor vehicle; title; vest in local authority; when.

Section 6-801 Motor vehicle owner or operator; liability to guest passenger; limitation.

1. The owner or operator of a motor vehicle shall not be liable for any damages to any passenger or person related to such owner or operator as spouse or within the second degree of consanguinity or affinity who is riding in such motor vehicle as a guest or by invitation and not for hire, unless such damage is caused by (1) the driver of such motor vehicle being under the influence of intoxicating liquor or (2) the gross negligence of the owner or operator in the operation of such motor vehicle.
2. For the purpose of this section, the term guest is hereby defined as being a person who accepts a ride in any motor vehicle without giving compensation therefor but shall not be construed to apply to or include any such passenger in a motor vehicle being demonstrated to such passenger as a prospective purchaser. Relationship by consanguinity or affinity within the second degree shall include parents, grandparents, children, grandchildren, and brothers and sisters. Should the

marriage of the driver or owner be terminated by death or dissolution, the affinial relationship with the blood kindred of his or her spouse shall be deemed to continue. [TCR 86-31, 86-79, 03-172, Same as Neb Rev. Stat. 25-21, 237]

Section 6-802 Leased trucks, truck-tractors, and trailers; liability of owner for damages. The owner of any truck, truck-tractor, whether with or without trailer, or trailer, leased for a period of less than thirty days or leased for any period of time and used for commercial purposes, shall be jointly and severally liable with the lessee and the operator thereof for any injury to or the death of any person or persons, or damage to or the destruction of any property resulting from the operation thereof in this state, except that the owner shall not be jointly and severally liable if there is in effect at the time the claim arises a valid liability insurance policy with coverage limits in the minimum amount of one million dollars per occurrence which is available to compensate any person with a claim arising out of the operation or use of the leased truck, truck-tractor, or trailer. This Section shall not limit or reduce the owner's liability for his/her own acts or omissions which cause damage to any person or when the lessee is a related entity or by reason of any workers' compensation law. [TCR 86-31, 86-79, 03-172, Same as Neb Rev. Stat. 25-21, 239]

Section 6-803 Operating a motor vehicle or a vessel to avoid arrest; penalty.

1. Any person who operates any motor vehicle to flee in such vehicle in an effort to avoid arrest or citation for the violation of any law of the Winnebago Tribe of Nebraska except non-moving traffic violations commits the offense of operation of a motor vehicle to avoid arrest.
2. Operating a motor vehicle to avoid arrest under subsection (1) of this Section is subject to a Level III penalty.
3.
    a. Any person who operates a vessel as in an effort to avoid arrest or citation for the violation of any law of the Winnebago Tribe of Nebraska shall be guilty of operation of a vessel to avoid arrest.
    b. Any person violating subdivision (a) of this subsection shall be guilty of a Level III civil offense. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 28-905]

Section 6-804 Winnebago Traffic Code; applicability to persons operating motorcycles. Any person who operates a motorcycle shall have all of the rights and shall be subject to all of the duties applicable to the driver of any other vehicle under the Winnebago Traffic Code except for special motorcycle regulations in the rules and except for those provisions of the rules which by their nature can have no application. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,306]

Section 6-805 Restrictions on operating motorcycles.

1. Any person who operates a motorcycle shall ride only upon a permanent and regular seat attached to the motorcycle. A person operating a motorcycle shall not carry any other person nor shall any other person ride on a motorcycle unless such motorcycle is designed to carry more than one person, in which event a passenger may ride upon the permanent and regular seat, if designed for two persons, or upon another seat firmly attached to the motorcycle to the rear or side of the operator.
2. A person shall ride upon a motorcycle only while sitting astride the seat, facing forward.
3. No person shall operate a motorcycle while carrying any package, bundle, or other article which prevents him/her from keeping both hands on the handlebars.
4. No operator shall carry any person, nor shall any person ride, in a position that interferes with the operation or control of the motorcycle or the view of the operator.

5. Any motorcycle which carries a passenger, other than in a sidecar or enclosed cab, shall be equipped with footrests for such passenger.
6. No person shall operate any motorcycle with handlebars more than fifteen inches above the mounting point of the handlebars.
7. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,307]

Section 6-806 Operating motorcycles on roadways laned for traffic; prohibited acts.

1. A motorcycle shall be entitled to full use of a traffic lane of any highway, and no vehicle shall be driven in such a manner as to deprive any motorcycle of the full use of such lane, except that motorcycles may be operated two abreast in a single lane.
2. The operator of a motorcycle shall not overtake and pass in the same lane occupied by a vehicle being overtaken.
3. No person shall operate a motorcycle between lanes of traffic or between adjacent lines or rows of vehicles.
4. Motorcycles shall not be operated more than two abreast in a single lane.
5. Subsections (2) and (3) of this Section shall not apply to peace officers in the performance of their official duties.
6. No person who rides upon a motorcycle shall attach him/herself, or the motorcycle to any other vehicle on a roadway.
7. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,308]

Section 6-807 Moped; operation; license or permit; required. No person shall operate a moped upon a highway unless such person has (1) a valid Class O operator's license or (2) a valid school or learner's permit. A violation of this Section shall be a Level II penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,310]

Section 6-808 Moped; operator; Winnebago Traffic Code; applicable.

1. Any person who rides a moped upon a roadway shall have all of the rights and shall be subject to all of the duties applicable to the driver of a motor vehicle under the Winnebago Traffic Code except for special moped regulations in the rules and except for those provisions of the rules which by their nature can have no application.
2. Regulations applicable to mopeds shall apply whenever a moped is operated upon any highway or upon any path set aside by the local authority for the use of mopeds. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,311]

Section 6-809 Moped; restrictions on operation.

1. Any person who operates a moped shall ride only upon a permanent and regular seat attached to the moped. A person operating a moped shall not carry any other person nor shall any other person ride on a moped unless such moped is designed by the manufacturer to carry more than one person.
2. A person shall ride upon a moped only while sitting astride the seat, facing forward.
3. No person shall operate a moped while carrying any package, bundle, or other article which prevents him/her from keeping both hands on the handlebars.
4. No operator shall carry any person, nor shall any person ride, in a position that interferes with the operation or control of the moped or the view of the operator.
5. Any moped which carries a passenger shall be equipped with footrests for such passenger.

6. No person shall operate any moped with handlebars more than fifteen inches above the mounting point of the handlebars.
7. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,312]

Section 6-810 Operating mopeds on roadways laned for traffic; prohibited acts.

1. A moped shall be entitled to full use of a traffic lane of any highway with an authorized speed limit of forty-five miles per hour or less, and no vehicle shall be operated in such a manner as to deprive any moped of the full use of such lane, except that mopeds and motorcycles may be operated two abreast in a single lane.
2. No person shall operate a moped between lanes of traffic or between adjacent lines or rows of vehicles.
3. Mopeds shall not be operated more than two abreast in a single lane.
4. Any person who operates a moped on a roadway with an authorized speed limit of more than forty-five miles per hour shall ride as near to the right side of the roadway as practicable and shall not ride more than single file.
5. No person who rides upon a moped shall attach him/ herself, or the moped to any other vehicle on a roadway.
6. Mopeds shall not be operated on sidewalks.
7. Notwithstanding the maximum speed limits in excess of twenty-five miles per hour established in Section 6-426, no person shall operate any moped at a speed in excess of thirty miles per hour.
8. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,313]

Section 6-811 Winnebago Traffic Code; applicability to persons operating bicycles.

1. Any person who operates a bicycle upon a highway shall have all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle under the Winnebago Traffic Code except for special bicycle regulations in the rules, except for those provisions of the rules which by their nature can have no application.
2. Regulations applicable to bicycles shall apply whenever a bicycle is operated upon any highway or upon any path set aside by local authority for the exclusive use of bicycles. [TCR 86-31, 86_79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,314]

Section 6-812 Riding of bicycles; prohibited acts.

1. Any person who rides a bicycle shall not ride other than upon or astride a permanent and regular seat attached thereto.
2. Any person who rides a bicycle shall not remove his/her feet from the pedals and shall have at least one hand on the handlebars at all times.
3. Any person who operates a bicycle shall not carry any package, bundle, or article which prevents such operator from keeping at least one hand upon the handlebars.
4. No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped.
5. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,315]

Section 6-813 Bicycles on roadways and bicycle paths; general rules; regulation by local authority.

1. Any person who operates a bicycle upon a roadway at less than the normal speed of traffic at the time and place and under conditions then existing shall ride as near to the right-hand curb or right-hand edge of the roadway as practicable except when:
   a. Overtaking and passing another bicycle or vehicle proceeding in the same direction;
   b. Preparing for a left turn onto a private road or driveway or at an intersection;
   c. Reasonably necessary to avoid conditions that make it unsafe to continue along the right-hand curb or right-hand edge of the roadway, including fixed or moving objects, stopped or moving vehicles, bicycles, pedestrians, animals, or surface hazards;
   d. Riding upon a lane of substandard width which is too narrow for a bicycle and a vehicle to travel safely side by side within the lane; or
   e. Lawfully operating a bicycle on the paved shoulders of a highway included in the state highway system.

   Any person who operates a bicycle upon a roadway with a posted speed limit of thirty-five miles per hour or less on which traffic is restricted to one direction of movement and which has two or more marked traffic lanes may ride as near to the left-hand curb or left-hand edge of the roadway as practicable. Whenever a person operating a bicycle leaves the roadway to ride on the paved shoulder or leaves the paved shoulder to enter the roadway, the person shall clearly signal his or her intention and yield the right-of-way to all other vehicles.
2. Any person who operates a bicycle upon a highway shall not ride more than single file except on paths or parts of highways set aside for the exclusive use of bicycles.
3. Whenever a usable path for bicycles has been provided adjacent to a highway, a person operating a bicycle shall use such path and shall not use such highway.
4. A local authority may by ordinance further regulate the operation of bicycles and may provide for the registration and inspection of bicycles.
5. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,317]

Section 6-814 Equipment on bicycles; lights; brakes.

1. When in use at nighttime, a bicycle shall be equipped with a light visible from a distance of at least five hundred feet to the front on a clear night and with a red reflector on the rear of a type which is approved by local authority and which is visible on a clear night from all distances between one hundred feet and six hundred feet to the rear when directly in front of lawful lower beams of headlights on a motor vehicle. A red light visible from a distance of five hundred feet to the rear may be used in addition to such red reflector.
2. Any bicycle used on a highway shall be equipped with a brake or brakes which will enable the operator to stop the bicycle within twenty-five feet of the point of braking when moving at a speed of ten miles per hour on dry, level, clean pavement.
3. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,318]

Section 6-815 Bicycles; reflective device or material; retail sale; requirements; violation; penalty.

1. No commercial dealer shall sell or offer to sell at retail any bicycle unless such bicycle is equipped with pedals which display a white or amber reflective device or material on both the front and rear surfaces of the pedal and such reflective surface is visible during the hours of darkness from four hundred feet when viewed from the front or rear under low beam headlights of a motor vehicle under normal atmospheric conditions.

2. All bicycles shall also be equipped with tires bearing a white or silver retro-reflective material on each side or a wide-angle reflector mounted on the spokes of each wheel. Such retro-reflective material shall be at least three-sixteenths of an inch wide, shall be affixed as an integral part of the tire or wheel, and shall remain effective for the life of the tire or wheel. The spoke-mounted, wide-angle reflector devices shall have a reflective surface of at least two square inches and shall be clear, amber, or red in color. Both the retro-reflective tires and wide-angle spoke reflectors shall be visible during the hours of darkness from four hundred feet when viewed under low beam headlights of a motor vehicle under normal atmospheric conditions when the bicycle is traveling at a ninety degree right angle to the direction of travel of the motor vehicle and is directly in front of such motor vehicle. Such reflective devices shall remain visible when the bicycle is turned forty degrees in either direction from such angle and crosses directly in front of such motor vehicle at a distance of four hundred feet.
3. No commercial dealer shall sell or offer to sell at retail any bicycle which does not comply with this Section. Any person who violates this Section shall be subject to a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,319]

Section 6-816 All-terrain vehicle, defined. For purposes of Sections 6-816 to 6-822, all-terrain vehicle shall mean any motorized off-highway vehicle which (1) is fifty inches or less in width, (2) has a dry weight of six hundred pounds or less, (3) travels on three or more low-pressure tires, (4) is designed for operator use only with no passengers, (5) has a seat or saddle designed to be straddled by the operator, and (6) has handlebars or any other steering assembly for steering control. [TCR 89-87, 03-172, Same as Neb Rev. Stat. 60-6,355]

Section 6-817 All-terrain vehicle; operation.

1. Except as provided in subsections (2) through (5) of this Section, an all-terrain vehicle shall not be operated on any highway within this jurisdiction. The crossing of any controlled-access highway shall not be permitted.
2. The crossing of a highway shall be permitted only if:
   a. The crossing is made at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing;
   b. The vehicle is brought to a complete stop before crossing the shoulder or roadway of the highway;
   c. The operator yields the right-of-way to all oncoming traffic that constitutes an immediate potential hazard;
   d. In crossing a divided highway, the crossing is made only at an intersection of such highway with another highway; and
   e. Both the headlight and taillight of the vehicle are on when the crossing is made.
3. An all-terrain vehicle may be operated on a highway when such operation occurs only between the hours of sunrise and sunset and such operation is incidental to the vehicle's use for agricultural purposes. Any person operating an all-terrain vehicle on a highway shall have a valid Class O operator's license or a farm permit as provided under Nebraska law and shall not operate such vehicle at a speed in excess of thirty miles per hour. When operated on a highway, the headlight and taillight of the vehicle shall be on and the vehicle shall be equipped with a bicycle safety flag which extends not less than five feet above ground attached to the rear of such vehicle. The bicycle safety flag shall be triangular in shape with an area of not less than thirty square inches and shall be day-glow in color.
4. All-terrain vehicles may be operated on highways in parades which have been authorized by the Winnebago Tribe or any department, board, commission, or political subdivision of the Tribe.
5. All-terrain vehicles may be operated on highways outside the corporate limits of any municipality by electric utility personnel within the course of their employment in accordance with the

operation requirements of subsection (3) of this Section, except that the operation of the vehicle pursuant to this subsection need not be incidental to the use of the vehicle for agricultural purposes. [TCR 89-87, 03-172, Same as Neb Rev. Stat. 60-6,356]

Section 6-818 All-terrain vehicle; lights required; when. Every all-terrain vehicle shall display a lighted headlight and taillight during the period of time from sunset to sunrise and at any time when visibility is reduced due to insufficient light or unfavorable atmospheric conditions. A violation of this Section shall be a Level I penalty. [TCR 89-87, 03-172, Same as Neb Rev. Stat. 60-6,357]

Section 6-819 All-terrain vehicle; equipment required. Every all-terrain vehicle shall be equipped with:

1. A brake system maintained in good operating condition;
2. An adequate muffler system in good working condition; and
3. A United States Forest Service qualified spark arrester. A violation of this Section shall be a Level I penalty. [TCR 89-87, 03-172, Same as Neb Rev. Stat. 60-6,358]

Section 6-820 Modification of all-terrain vehicle; prohibited. No person shall:

1. Equip the exhaust system of an all-terrain vehicle with a cutout, bypass, or similar device;
2. Operate an all-terrain vehicle with an exhaust system so modified; or
3. Operate an all-terrain vehicle with the spark arrester removed or modified except for use in closed-course competition events. A violation of this Section shall be a Level I penalty. [TCR 89-87, 03-172, Same as Neb Rev. Stat. 60-6,359]

Section 6-821 All-terrain vehicle; competitive events; exemptions. All-terrain vehicles participating in competitive events may be exempted from Sections 6-818 to 6-820 at the discretion of the proper authority. [TCR 89-87, 03-172, Same as Neb Rev. Stat. 60-6,360]

Section 6-822 All-terrain vehicle; accident; report required. If an accident results in the death of any person or in the injury of any person which requires the treatment of the person by a physician, the operator of each all-terrain vehicle involved in the accident shall give notice of the accident in the same manner as provided in Section 6-704. [TCR 89-87, 03-172, Same as Neb Rev. Stat. 60-6,361]

Section 6-823 Snowmobiles; registration required.

1. No person may operate a snowmobile with the Winnebago Reservation unless such snowmobile has been registered with the State of Nebraska in accordance with the Revised Nebraska Statutes, Neb Rev. Stat. § 60,322 through § 60,331.
2. A violation of this Section shall be a Level I penalty. [TCR 03-172]

Section 6-824 Snowmobile operation; equipment; permission of landowner.

1. Except as provided herein, no person shall operate a snowmobile upon any highway. Subject to regulation by local authorities in their respective jurisdictions, a snowmobile may be operated on the roadway of any highway, on the right-hand side of such roadway and in the same direction as the highway traffic, except that no snowmobile shall be operated at any time within the right-of-way of any controlled-access highway within this state.
2. A snowmobile may make a direct crossing of a highway at any hour of the day if:
   a. The crossing is made at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing;

b. The snowmobile is brought to a complete stop before crossing the shoulder or roadway of the highway;
c. The driver yields the right-of-way to all oncoming traffic which constitutes an immediate hazard;
d. In crossing a divided highway, the crossing is made only at an intersection of such highway with another highway; and
e. When the crossing is made between sunset and sunrise or in conditions of reduced visibility, both the headlights and taillights are on.

3. No snowmobile shall be operated upon a highway unless equipped with at least one headlight and one taillight, with reflector material of a minimum area of sixteen square inches mounted on each side forward of the handlebars, and with brakes.
4. A snowmobile may be operated upon a highway other than as provided by subsection (2) of this Section in an emergency during the period of time when and at locations where snow upon the roadway renders travel by automobile impractical.
5. Unless otherwise provided herein, all other provisions of the Winnebago Traffic Code shall apply to the operation of snowmobiles upon highways except for those relating to required equipment and those which by their nature have no application.
6. No person shall operate a snowmobile upon any private lands without first having obtained permission of the owner, lessee, or operator of such lands.
7. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,335]

Section 6-825 Snowmobile contests; requirements. Nothing in these sections shall prohibit the use of snowmobiles within the right-of-way of any state highway or other public road in any international or other sponsored contest; provided, that prior written permission for such contests shall first be obtained by the sponsoring persons or group from the official or board having jurisdiction over the highway or public road upon which the contest is to be held. Any person or persons holding a snowmobile contest on any right-of-way of a public road or highway without first obtaining written permission therefore shall be guilty of a Level I penalty. In permitting such contest, the official or board having jurisdiction may prescribe such restrictions or conditions as may be deemed advisable. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-2,014 (1971)] **NOTE**: TCR 89-87 changes class of offense.

Section 6-826 Snowmobiles; prohibited acts. It shall be unlawful for any person to drive or operate any snowmobile on any public land, ice, snow, park, right-of-way, trail, or course in the following unsafe or harassing ways:

1. At a rate of speed greater than reasonable or proper under all the surrounding circumstances;
2. In a careless, reckless, or negligent manner so as to endanger the person or property of another or to cause injury or damage thereto;
3. While under the influence of alcoholic liquor or of any drug;
4. Without a lighted headlight and taillight when required for safety; and
5. In any tree nursery or planting in a manner which damages or destroys growing stock.
6. A violation of subsection (4) of this Section shall be a Level II penalty; a violation of any other subsection shall be a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,337]

Section 6-827 Snowmobile; operation; muffler, when required. Except as provided in this Section, every snowmobile shall be equipped at all times with a muffler in good working order which blends the exhaust noise into the overall snowmobile noise and is in constant operation to prevent excessive or unusual noise. The exhaust system shall not emit or produce a sharp popping or crackling sound. This Section shall not apply to organized races or similar competitive events held on (1) private lands, with the

permission of the owner, lessee, or custodian of the land, or (2) public lands, with the consent of the public agency owning the land. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 03-172, Same as Neb Rev. Stat. 60-6,339]

Section 6-828 Operation by person under twelve years of age; operation by a person under sixteen; restrictions; snowmobile safety certificate.

1. No person under the age of twelve years shall operate a snowmobile in this jurisdiction unless accompanied by a parent, guardian, or other person over eighteen years of age.
2. No person over the age of twelve years and under the age of sixteen years shall operate a snowmobile in this jurisdiction unless such person (a) holds a valid snowmobile safety certificate, (b) is accompanied by a person fourteen years of age or over who holds a valid snowmobile safety certificate, or (c) is accompanied by a person over the age of eighteen years.
3. The operator of a snowmobile shall not be required to hold an operator's license.
4. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 03-172, Same as Neb Rev. Stat. 60-6,340]

Section 6-829 Snowmobile owner; prohibited acts. It shall be unlawful for the owner of a snowmobile to permit such snowmobile to be operated contrary to the these provisions for purposes of carrying a shotgun or rifle thereon unless such shotgun or rifle is unloaded and encased. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 03-172, Same as Neb Rev. Stat. 60-6,344]

Section 6-830 Snowmobiles; carrying firearms; hunting; unlawful. It shall be unlawful for any person to shoot, take, hunt, or kill or attempt to shoot, take, hunt, or kill any wild animal or bird from or with a snowmobile or for any person to carry or possess any shotgun or rim-fire rifle while operating or riding on a snowmobile, or for any person to carry or possess any firearm, bow and arrow, or other projectile device on a snowmobile unless such bow and arrow or projectile device is enclosed in a car carrying case or such firearm is unloaded and enclosed in a carrying case. A violation of this Section shall be a Level I penalty. [TCR 86-31, 86-79, 03-172, Same as Neb Rev. Stat. 60-6,342]

Section 6-831 Snowmobile; confiscation; sale; proceeds; disposition. A peace officer shall seize any snowmobile used for the purpose of gaining access to property for the purpose of committing a felony thereon. Any snowmobile seized pursuant to this Section shall be held, subject to the order of the Tribal Court in which such felony was committed, and shall be confiscated after conviction of the person from whom the snowmobile was seized and disposed of by public auction which shall be conducted by the local police department. The proceeds from the sale of a confiscated snowmobile shall be remitted to the Tribal Court for credit to local charity. [TCR 86-31, 86-79, 03-172, Same as Neb Rev. Stat. 60-6,345]

Section 6-832 Snowmobile operation; accident; requirements.

1. The operator of a snowmobile involved in a collision, accident, or other casualty occurring on any public land, ice, snow, park, right-of-way, trail, or course shall give his or her name and address and the number of such snowmobile in writing to any injured person and to the owner of any property damaged in such collision, accident, or other casualty.
2. When a collision, accident, or other casualty involving a snowmobile results in death or injury to a person or damage to property in excess of one hundred dollars, the operator of such snowmobile shall within ten days file with the Nebraska Director of Motor Vehicles a full report of such collision, accident, or other casualty in such form and detail as the director by regulation may prescribe. [TCR 86-31, 86-79, 03-172, Same as Neb Rev. Stat. 60-6,346]

Section 6-833 Legislative intent. It is the intent of the Winnebago Tribe to remove from street use and operation minibikes and similar two-wheeled, three-wheeled, or four-wheeled miniature vehicles, the visibility, power, and equipment of which are inadequate for mixing with normal vehicular traffic upon streets and highways. This Section shall not apply to an electric personal assistive mobility device. [TCR 86-31, 86-79, 03-172, Same as Neb Rev. Stat. 60-6,351]

Section 6-834 Minibikes; operation; violations; penalty; unlawful acts. It shall be unlawful for any person to drive or operate any minibike on any public land, park, right-of-way, trail, or course in the following unsafe or harassing ways:

1. At a rate of speed greater than reasonable or proper under all the surrounding circumstances;
2. In a careless, reckless or negligent manner so as to endanger the person or property of another or to cause injury or damage thereto;
3. While under the influence of intoxicating liquor or narcotics or habit forming drugs;
4. Without a lighted head and tail light when required for safety; and
5. In any tree nursery or planting in a manner which damages or destroys growing stock.
6. A violation of subsection (4) of this Section is a Level II penalty; any other violation is a Level I penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-2,107]

Section 6-835 Radar transmission device; definitions. For purposes of Sections 6-835 to 6-838:

1. Radar transmission device shall mean any mechanism designed to interfere with the reception of radio microwaves in the electromagnetic spectrum, which microwaves, commonly referred to as radar, are employed by law enforcement officials to measure the speed of motor vehicles;
2. Possession shall mean to have a radar transmission device in a motor vehicle if such device is not (a) disconnected from all power sources and (b) in the rear trunk, which shall include the spare tire compartment, or any other compartment which is not accessible to the driver or any other person in the vehicle while such vehicle is in operation. If no such compartment exists in a vehicle, then such device must be disconnected from all power sources and be placed in a position not readily accessible to the driver or any other person in the vehicle; and
3. Transceiver shall mean an apparatus contained in a single housing, functioning alternately as a radio transmitter and receiver. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,274]

Section 6-836 Radar transmission device; operation; possession; unlawful; violation; penalty. It shall be unlawful for any person to operate or possess any radar transmission device while operating a motor vehicle on any highway in this jurisdiction. A violation of this Section shall be a Level V penalty. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,275]

Section 6-837 Authorized devices. Section 6-836 shall not apply to (1) any transmitter, transceiver, or receiver of radio waves which has been lawfully licensed by the Federal Communications Commission or (2) any device being used by law enforcement officials in their official duties. [TCR 86-31, 86-79, 89-87, 03-172, Same as Neb Rev. Stat. 60-6,276]

Section 6-838 Prohibited device; seizure; disposal. Any device prohibited by Sections 6-835 and 6-838 found as the result of a traffic stop made under such sections shall be seized, and when no longer needed as evidence, such device shall, if the owner was convicted of an offense under such sections, be considered as contraband and disposed of. [TCR 86-31, 86-79, 03-172, Same as Neb Rev. Stat. 60-6,277]

Section 6-839 Abandoned motor vehicle, defined.

1. A motor vehicle is an abandoned vehicle:
   a. If left unattended, with no license plates or valid In Transit decals affixed thereto, for more than six hours on any public property;
   b. If left unattended for more than twenty-four hours on any public property, except a portion thereof on which parking is legally permitted;
   c. If left unattended for more than forty-eight hours, after the parking of such vehicle has become illegal, if left on a portion of any public property on which parking is legally permitted;
   d. If left unattended for more than seven days on private property if left initially without permission of the owner, or after permission of the owner is terminated; or
   e. If left for more than thirty days in the custody of a law enforcement agency after the agency has sent a letter to the last-registered owner.
2. For purposes of this Section:
   a. Public property means any public right-of-way, street, highway, alley, or park or other state, county, or municipally owned property; and
   b. Private property means any privately owned property which is not included within the definition of public property. [TCR 86-31, 86-79, 03-172, Same as Neb Rev. Stat. 60-1901]

Section 6-840 Abandoned motor vehicle; title; vest in local authority; when. If an abandoned vehicle, at the time of abandonment, has no license plates of the current year or valid In Transit decals affixed and is of a wholesale value, taking into consideration the condition of the vehicle, of two hundred fifty dollars or less, title shall immediately vest in the local authority having jurisdiction thereof in accordance with Nebraska Revised Statutes 60-1902 through 60-1909 as though fully set forth herein. [TCR 86-31, 86-79, 03-172, Same as Neb Rev. Stat. 60-1902]

TITLE 7
HEALTH, SAFETY, AND WELFARE

SUMMARY OF CONTENTS

SECTION	ARTICLE-PAGE
1. TABLE OF REVISIONS	ii
2. TABLE OF CONTENTS	iii
3. ARTICLE 1: MENTAL HEALTH COMMITMENT ACT	1-1
4. ARTICLE 3: ANIMALS	3-1
5. ARTICLE 4: OPEN BURNING	4-1
6. ARTICLE 5: BURNING OF PETROLEUM PRODUCTS	5-1
7. ARTICLE 6: OPEN DUMPING	6-1
8. ARTICLE 8: COMPULSORY EDUCATION	8-1
9. ARTICLE 9: FOOD CODE	9-1
10. ARCITLE 10: CORONER	10-1
11. ARTICLE 11: WINNEBAGO DRUG-FREE WORKPLACE	11-1
12. ARTICLE 12: WINNEBAGO WORKER'S COMPENSATION	12-1
13. ARTICLE 13: FLOOD DAMAGE PREVENTION CODE	13-1
14. ARTICLE 14: WINNEBAGO POLLUTION CONTROL CODE	14-1
15. ARTICLE 15: LANDLORD TENANT RELATIONS	15-1
16. ARTICLE 16: SEX OFFENDER REGISTRATION	16-1
17. ARTICLE 17: SEX OFFENDER RESTRICTIONS	17-1
18. ARTICLE 18: WHISTLE BLOWER PROTECTION	18-1
19. ARTICLE 19: SETTLING PARTICIPANT BRAND LISTING ACT	19-1

TITLE 7
TABLE OF REVISIONS

The following table is included in this title as a guide for determining whether each article properly reflects the current version. This table will be updated with the revision of each article.

Through usage and supplementation, pages in bound titles can be inserted and removed when sections are revised on an article-by-article basis. This table should be placed before the Table of Contents in the title.

The "Article" column lists each article, and the "Section" column lists any corresponding sections that have been revised, in sequence. The "Revised Date" column reflects the effective date of the revision (e.g., "6/20/15"). If an article is not listed in the table, it has not been revised since the December 2015 Winnebago Tribal Code update and distribution.

Article	**Section**	**Revised Date**
19	1901-1906	12/22/15
6	601-602, 604	10/19/16 (effective 11/18/16)

TITLE 7
HEALTH, SAFETY, AND WELFARE

ARTICLE 1
MENTAL HEALTH COMMITMENT ACT
(As revised October 16, 2013)

7-101 Definitions.
7-102 Petition.
7-103 Counsel.
7-104 Hearing On The Petition.
7-105 Disposition.
7-106 Emergency Protective Custody.

TITLE 7
ARTICLE 3
ANIMALS
(Revised March 9, 2011)

7-300 Definitions.
7-301 Offices designated.
7-302 Licensing of dogs and cats.
7-303 Breeder of Kennel permits.
7-304 Rabies certification of vaccination required.
7-305 Fee waiver.
7-306 Display of tag.
7-307 Transfer or change of ownership.
7-308 Duplicate tag.
7-309 Removal of license tags.
7-310 At large prohibited.
7-311 Spay and Neuter.
7-312 Impoundment and ticketing.
7-313 Disposition of animals.
7-314 General prohibitions and duties.
7-315 Animal care; animal cruelty.
7-316 Release or adoption of animals.
7-317 Release of unsterilized animals.
7-318 Number of animals.
7-319 Non-indigenous birds.
7-320 Impoundment fees.
7-321 Redemption.
7-322 Injured animals at large.
7-323 Confinement of animals.
7-324 Dog pens.
7-325 Conditions of pens and premises.
7-326 Animal bites.
7-327 Nuisance animals.
7-328 Dangerous animals.
7-329 Determination of vicious animal, dangerous animal, potentially dangerous animal; notice to owner.
7-330 Vicious dogs.
7-331 Appeal procedure.
7-332 Requirements for dangerous animals; penalties.
7-333 Animal fighting or attack training; penalty.
7-334 Keeping of innately wild animals.
7-335 Wildlife protection.
7-336 Keeping of exotic animals.
7-337 Keeping of livestock.
7-338 Keeping of animals for which no licensed, approved rabies vaccine is available.
7-339 Kennel standards.
7-340 Harboring of strays.
7-341 Trapping animals.
7-342 Rabies reports; examination; quarantine.
7-343 Civil liability of owner for damages caused by the owner’s dog, cat or other domesticated animal.
7-344 Sovereign immunity of the Tribe.
7-345 Penalties.

TITLE 7
ARTICLE 4
OPEN BURNING

7-401 Definitions.
7-402 Open burning.
7-403 Prohibition on open burning.
7-404 Trash containers.
7-405 Penalty.

TITLE 7
ARTICLE 5
BURNING OF PETROLEUM PRODUCTS

7-501 Definitions.
7-502 Burning of petroleum products.
7-503 Penalty.

TITLE 7
ARTICLE 6
OPEN DUMPING

7-601 Definitions.
7-602 Open dumping.
7-603 Containment Dumping.
7-604 Penalty.

TITLE 7
ARTICLE 8
COMPULSORY EDUCATION

7-801 Compulsory education; attendance required.
7-802 Compulsory education; exceptions.
7-803 Record of attendance; made where.
7-804 Non-attendance lists; transmission of information.
7-805 Entry or withdrawal of student; attendance reports.
7-806 Non-attendance; duty to report; investigation.
7-807 Excessive absenteeism; report.
7-808 Diversion team; process.
7-809 Failure to comply with diversion process; continued violation; further action.
7-810 School procedures.
7-811 Effective date.

TITLE 7
ARTICLE 9
FOOD CODE

7-901 Food Code.
7-902 Food safety, illness prevention and honest presentation.
7-903 Statement.
7-904 Statement of application and listing of terms.
7-905 Person in Charge.
7-906 Clean Condition.
7-907 Cleaning Procedure.
7-908 When to Wash.
7-909 Clean Condition.
7-910 Eating, Drinking, or Using Tobacco.
7-911 Discharge from the Eyes, Nose or Mouth.
7-912 Food.
7-913 Characteristics.
7-914 Nonfood-Contact Surfaces.
7-915 Equipment and Utensils.
7-916 Food-Contact Surfaces.
7-917 Nonfood-Contact Surfaces.
7-918 Approved System.
7-919 Outdoor Enclosure.
7-920 Receptacles.
7-921 Outside Receptacles.
7-922 Storing Refuse, Recyclables, and Returnables.
7-923 Areas, Enclosures, and Receptacles, Good Repair.
7-924 Surface Characteristics.
7-925 Handwashing Cleanser, Availability.
7-926 Mechanical.
7-927 Maintaining Premises, Unnecessary Items and Litter.
7-928 Prohibiting Animals.
7-929 Separation of poisonous or toxic materials.
7-930 Poisonous or toxic materials; Restriction.
7-931 Conditions of Use.
7-932 Rodent Bait Stations.
7-933 Public Health Protection.
7-934 Preventing Health Hazards, Provisions for Conditions Not Addressed.
7-935 Modifications and Waivers.
7-936 Prerequisite for Operation.
7-937 Form of Submission.
7-938 Qualifications and Responsibilities of Applicants.
7-939 Contents of Application.
7-940 Existing Establishments, Permit Renewal, and Change of Ownership.
7-941 Denial of Application for Permit, Notice.
7-942 Revocation.
7-943 Appeal.
7-944 Responsibilities of Permit Holder.

TITLE 7
ARTICLE 10
CORONER

7-1000 Appointment of coroner; qualifications; vacancies.
7-1001 Investigations and inquests.
7-1002 Expenses.
7-1003 Witnesses; fees.
7-1004 Oath of witnesses.
7-1005 Testimony; filing.
7-1006 Witness bound over; return.
7-1007 Burial.
7-1008 Bodies; effects; custody.
7-1009 Certificates of death.
7-1010 Expenses.
7-1011 Fingerprinting of unidentified deceased person.
7-1012 Coroner removal of pituitary gland during autopsy.

TITLE 7
ARTICLE 11
WINNEBAGO DRUG-FREE WORK PLACE
(Revised June 13, 2012)

7-1101 Citation.
7-1102 Purpose.
7-1103 Definitions.
7-1104 Statement of policy on drugs.
7-1105 Statement of policy on alcohol.
7-1106 Zero tolerance policy.
7-1107 Education and training of employees.
7-1108 Drug and alcohol testing procedures; reasonable suspicion.
7-1109 Random drug and alcohol testing.
7-1110 Drug test results.
7-1111 Alcohol test results.
7-1112 Refusal to submit.
7-1113 Positive test results.
7-1114 Release of test results.
7-1115 Laboratory facility.
7-1116 Applicants; generally.
7-1117 Prohibited acts; penalties.
7-1118 Supervisor responsibility.
7-1119 Consent to jurisdiction.

TITLE 7
ARTICLE 12
WINNEBAGO WORKER'S COMPENSATION

7-1201 Purpose.
7-1202 Effective Date.
7-1203 Scope and Exclusive Remedy.
7-1204 Sovereign Immunity.
7-1205 Acknowledgment of Program and Notice to Covered Employees.
7-1206 Definitions.
7-1207 Notice of Injury to Employer & Filing of Claim with Administrator.
7-1208 Administrator.
7-1209 Time Limit for Filing of Claim.
7-1210 Medical Treatment of Covered Employee.
7-1211 Independent Medical Examination.
7-1212 Effect of Refusal or Obstruction of Examination or Treatment.
7-1213 Access to Medical Records and Medical Reports.
7-1214 Aggravation of Pre-existing Injury.
7-1215 Disclosure of Pre-existing Disabilities.
7-1216 False Statement or Representation in Employment Application.
7-1217 Benefits Mistakenly Awarded by Administrator.
7-1218 Benefits Mistakenly Awarded by the Worker's Compensation Appeals Committee.
7-1219 Benefits Induced by Proven Fraud.
7-1220 Right to Occupational Injury Benefits.
7-1221 Employer's Liability to Medical, Surgical and Hospital Services.
7-1222 Selection of Treating Physician by Administrator.
7-1223 Return to Work Form.
7-1224 Waiver by Covered Employee Invalid.
7-1225 Other Benefits Not Factors.
7-1226 Defenses to Liability Denied.
7-1227 Average Weekly Wage.
7-1228 Maximum and Minimum Weekly Benefits.
7-1229 Compensation; Schedule; Total Partial, and Temporary Disability; Injury to Specific Parts of the Body; Amounts and Duration of Payments.
7-1230 Exclusions from Coverage.
7-1231 Waiting Period for Benefits.
7-1232 Injuries Causing Death.
7-1233 Computation of Payments of Death Benefits.
7-1234 Death Benefit Compensation Schedule.
7-1235 Death of Covered Employee Ends Disability Payments.
7-1236 Burial Expenses.
7-1237 Waiting Time Penalty.
7-1238 Worker's Compensation Appeals Committee.
7-1239 Procedures for Disputed Claims.
7-1240 Hearing Request Procedures.
7-1241 Experts.
7-1242 Liability of Third Person to Injured Covered Employee; Subrogation Powers.
7-1243 Third Party Claim Procedures and Notice.
7-1244 Third Party Claims & Attorney Fees.
7-1245 Third Party Claims; Settlement Requirements.
7-1246 Awards.

TITLE 7
ARTICLE 13
FLOOD DAMAGE PREVENTION CODE
(Revised November 4, 2011)

7-1301 Findings of Fact.
7-1302 Statement of purpose.
7-1303 Methods of reducing flood losses.
7-1304 Definitions.
7-1305 Land to which this Article applies.
7-1306 Basis for establishing the area of special flood hazard.
7-1307 Penalties for non-compliance.
7-1308 Abrogation of greater restrictions.
7-1309 Interpretation.
7-1310 Warning and disclaimer of liability.
7-1311 Establishment of development permits.
7-1312 Administration.
7-1313 Duties and responsibilities of the Administrator.
7-1314 Variance procedures.
7-1315 General standards for flood hazard reduction.
7-1316 Specific standards for flood hazard reduction.
7-1317 Before regulatory floodway.
7-1318 Floodways.
7-1319 Critical Facility.

TITLE 7
ARTICLE 14
WINNEBAGO POLLUTION CONTROL CODE

7-1400 Citation.
7-1401 Definitions.
7-1402 Pollution emissions and abatement.
7-1402.1 Abatement required.
7-1403 Exemption.
7-1404 Use of notification.
7-1405 Notification and approval of potential emission facility.
7-1406 Livestock feedlots.
7-1407 Cause of action for abandonment of hazardous waste on property of another.
7-1408 Livestock odor.
7-1409 Authority to issue penalty orders.
7-1410 Amount of penalty; considerations.
7-1411 Corrective order.
7-1412 Definitions.
7-1413 PCB: prohibited use.
7-1414 Definitions.
7-1415 Exemptions.
7-1416 Monitoring.
7-1417 Contents labeled.
7-1418 Environmental protection requirements.

TITLE 7
ARTICLE 15
LANDLORD TENANT RELATIONS

7-1501 Applicability.
7-1502 Definitions.
7-1503 Rental Agreement.
7-1504 Security Deposit.
7-1505 Eviction for Possession of a Controlled Substance.
7-1506 Utilities and Waste Disposal.
7-1507 Termination.
7-1508 Rights and Obligations of Landlord.
7-1509 The Rights and Obligations of Tenant.
7-1510 Landlord Remedies.
7-1511 Tenant Remedies.
7-1512 Notification.
7-1513 Winnebago Tribal Housing Committee.

TITLE 7
ARTICLE 16
SEX OFFENDER REGISTRATION
(Adopted May 25, 2011)

7-1601 Citation.
7-1602 Purpose and Legislative Intent.
7-1603 Effective Date.
7-1604 Construction of rules.
7-1605 References to federal law incorporated.
7-1606 Creation of Sex Offender Registry.
7-1607 Creation of public Sex Offender Registry website.
7-1608 Cooperative Agreement with the State of Nebraska permitted.
7-1609 Definitions.
7-1610 Covered offenses.
7-1611 Tier 1 offenses; sex offenses.
7-1612 Tier 1 offenses; offenses involving minors.
7-1613 Tier 1 offenses; certain tribal offenses.
7-1614 Tier 1 offenses; certain federal offenses.
7-1615 Tier 1 offenses; certain military offenses.
7-1616 Tier 2 offenses; recidivism and felonies.
7-1617 Tier 2 offenses; offenses involving minors.
7-1618 Tier 2 offenses; certain tribal offenses.
7-1619 Tier 2 offenses; certain federal offenses.
7-1620 Tier 2 offenses; certain military offenses.
7-1621 Tier 3 offenses; recidivism and felonies.
7-1622 Tier 3 offenses; general offenses.
7-1623 Tier 3 offenses; certain tribal offenses.
7-1624 Tier 3 offenses; certain federal offenses.
7-1625 Tier 3 offenses; certain military offenses.
7-1626 Required information; general requirements.
7-1627 Criminal history.
7-1628 Date of Birth.
7-1629 DNA sample.
7-1630 Driver's licenses, identification cards, passports, and immigration documents.
7-1631 Employment information.
7-1632 Finger and palm prints.
7-1633 Internet identifiers.
7-1634 Name.
7-1635 Offense Information.
7-1636 Phone numbers.
7-1637 Picture.
7-1638 Physical description.
7-1639 Professional licensing information.
7-1640 Residence address.
7-1641 School.
7-1642 Social Security Number.
7-1643 Temporary lodging.
7-1644 Vehicle information.
7-1645 Frequency.
7-1646 Reduction of registration periods.
7-1647 Clean record.
7-1648 Requirements for in person appearances.
7-1649 Where registration is required; jurisdiction of conviction.
7-1650 Where registration is required; jurisdiction of incarceration.
7-1651 Where registration is required; jurisdiction of residence.
7-1652 Where registration is required; jurisdiction of employment.
7-1653 Where registration is required; jurisdiction of school attendance.
7-1654 Where registration is required; jurisdiction of where may be found.
7-1655 Timing of registration; timeframe.
7-1656 Timing of registration; duties of Chief of Police.
7-1657 Retroactive registration.
7-1658 Timing of recapture.
7-1659 Keeping registration current; jurisdiction of residency.
7-1660 Keeping registration current; jurisdiction of school attendance.
7-1661 Keeping registration current; jurisdiction of employment.
7-1662 Keeping registration current; duties of Chief of Police.
7-1663 Failure to appear for registration and absconding; failure to appear.
7-1664 Failure to appear for registration and absconding; absconded sex offenders.
7-1665 Failure to appear for registration and absconding; failure to register.
7-1666 Website.
7-1667 Dru Sjodin National Sex Offender Public Website.
7-1668 Required website information.
7-1669 Prohibited website information.
7-1670 Witness protection.
7-1671 Law enforcement notification.

TITLE 7
ARTICLE 16
SEX OFFENDER REGISTRATION
(Adopted May 25, 2011)
(continued)

7-1672 Community notification.
7-1673 No waiver of immunity.
7-1674 Good faith.
7-1675 Violation; criminal offense.
7-1676 Violation; civil penalty.
7-1677 Hindrance of sex offender registration; criminal offense.
7-1678 Hindrance of sex offender registration; civil penalty.

TITLE 7
ARTICLE 17
SEX OFFENDER RESTRICTIONS
(Adopted October 19, 2011)

7-1701 Purpose.
7-1702 Definitions.
7-1703 Residency restrictions; general.
7-1704 Residency restrictions; civil penalty.
7-1705 Residency restrictions; tribal property
7-1706 Measurement of distance.
7-1707 Renting to a sex offender.
7-1708 Exclusion zones.
7-1709 Exclusion zones; civil penalty.
7-1710 Effective date.

TITLE 7
ARTICLE 18
WHISTLE BLOWER PROTECTION
(Adopted October 5, 2015)

7-1801 Citation.
7-1802 Purpose.
7-1803 Scope.
7-1804 Authority.
7-1805 Definitions.
7-1806 Employee's Duty to Report.
7-1807 Reports of Criminal Activity.
7-1808 Reports of Mismanagement, Waste, Abuse, or Dangers to Public Health or Safety.
7-1809 Retaliation Prohibited.
7-1810 Reporting that is not Protected.
7-1811 False Claims.
7-1812 Cause of Action.
7-1813 Limited Waiver of Sovereign Immunity.
7-1814 Limited Remedies.
7-1815 Exclusive Jurisdiction and Sovereign Immunity.
7-1816 Effective Date.

TITLE 7
ARTICLE 19
SETTLING PARTICIPANT BRAND LISTING ACT
(Adopted December 22, 2015)

7-1901 Citation.
7-1902 Purpose.
7-1903 Scope.
7-1904 Retaliation Prohibited.
7-1905 Reporting that is not Protected.
7-1906 False Claims.

TITLE 7
HEALTH, SAFETY, AND WELFARE

ARTICLE 1
MENTAL HEALTH COMMITMENT ACT
(As revised October 16, 2013)

7-101 Definitions.
7-102 Petition.
7-103 Counsel.
7-104 Hearing On The Petition.
7-105 Disposition.
7-106 Emergency Protective Custody.

7-101 Definitions.

1. "Alcoholic" means an individual who has lost the power of self-control or exhibits cognitive deficiencies, general confused thinking, or other manifestations of disorientation, which show an inability to make judgments about areas of behavior that do not directly relate to his/her alcohol consumption.
2. "Drug addict" means an individual who has a physiological or psychological dependence on a drug or drugs which he/she used in a manner not prescribed by a physician.
3. "Mentally ill individual" means an individual with an organic, mental, or emotional disorder which substantially impairs the capacity to use self-control, judgment, and discretion in the conduct of personal affairs and social relations. This term is not intended to include an individual with intellectual disabilities and other developmental disabilities of significantly sub-average intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior. Drug addiction and alcoholism do not per se constitute mental illness, although individuals suffering from these conditions may also be suffering from mental illness.
4. "Individual requiring treatment" means either:
   a. An individual who is mentally ill, an alcoholic or a drug addict and who, as a result of such condition, can reasonably be expected within the near future to intentionally or unintentionally cause serious physical harm to him/herself, others or property and who has engaged in an act or acts or has made significant threats that are substantially supportive of this expectation; or
   b. An individual who is mentally ill, an alcoholic or a drug addict and who, as a result of such condition, is unable to attend to his/her basic physical needs such as food, clothing, or shelter that must be attended to for him/her to avoid serious harm in the near future and who has demonstrated that inability by failing to meet those basic physical needs.
5. "Law enforcement officer" means a member of the Winnebago Police Department, a federal law enforcement officer or a state or county law enforcement officer duly cross-deputized by the Winnebago Tribe of Nebraska to assert law enforcement powers within the Winnebago reservation.
6. "Respondent" means the individual alleged to be mentally ill, an alcoholic or a drug addict in the proceedings. [TCR 93-96, 11-73, 14-08]

7-102 Petition.

1. The petition for commitment shall be filed with the Court by a Public Health Service/Indian Health Service physician, registered nurse, mental health official, social services official, substance abuse counselor, Tribal prosecutor or an interested person. Any such petitioner must

have reason to believe that the respondent is mentally ill, an alcoholic or a drug addict. The prosecutor shall represent the Tribe/petitioner or interested person.

2. The petition must be supplemented by a supporting statement or affidavit by at least one individual who has actual personal knowledge of the mental, alcohol or drug problem of the respondent. Such statement shall set forth the reason(s) for the proposed treatment and/or hospitalization.
3. Temporary detention order and hearing.
   a. Upon receipt and review of the petition and any statement or affidavit, should the Tribal Judge deem an emergency to exist, he/she shall order the detention or hospitalization of the respondent in an available facility in which the freedom of the respondent is least restricted and yet the respondent, other persons and/or property are adequately protected and the respondent may be properly evaluated.
   b. An order of the Court ordering that the respondent be detained or hospitalized prior to hearing on the petition shall be accompanied by a "Care Provider Report and Recommendation" form, and this report form shall be provided to the care provider facility. The care provider facility shall prepare the "Care Provider Report and Recommendation" regarding the respondent within seventy-two (72) hours of the beginning of the detention or hospitalization. Upon receipt, the Court shall review the report as soon as practical.
   c. Taking into consideration the entirety of the "Care Provider Report and Recommendation" and the allegations of the petition, the Court may order the release of the respondent if the "Care Provider Report and Recommendation" recommends release. If released, the respondent shall sign a promise to appear in Court within seven (7) days after release for an initial appearance on the petition.
   d. If the "Care Provider Report and Recommendation" recommends that the respondent remain in detention or hospitalization, the Court may order that the respondent remain in detention or hospitalization. If the respondent is ordered to remain in detention, the Court shall order an initial appearance on the petition within seven (7) days of such order of continued detention.
   e. A respondent detained under this Section 3 may request a hearing to review his/her ongoing detention at, or at any time after, the initial appearance on the petition. Such hearing shall be held no later than seventy two (72) hours after the request. If respondent desires, he/she may challenge his/her ongoing detention at the initial hearing on the petition.
   f. If the respondent does not request a hearing, the Court shall order a hearing to review the ongoing detention not more than thirty (30) days after the commencement of the detention. The respondent shall be provided at least seventy two (72) hours notice of the hearing and shall have the right to attend the hearing.
   g. At a hearing held pursuant to subsections (e) or (f), the Tribe shall have the burden of showing good cause as to why the respondent should remain in detention pending a hearing on the petition. The respondent shall have the right to counsel, to present evidence and cross-examine witnesses at a hearing held pursuant to subsections (e) or (f). If the Tribe fails to show good cause for continued detention, the respondent shall be released. The Court may place reasonable conditions upon such release to ensure respondent's attendance at the hearing on the petition and to protect the respondent and the public.
   h. The Court shall entertain a motion by the Tribal Prosecutor requesting a revocation of the release based upon evidence that the respondent is not abiding by the conditions of the release.
4. The respondent shall be served with a copy of the petition. The respondent may waive a hearing and proceed to treatment. [TCR 93-96, 11-73, 14-08]

7-103 Counsel. The respondent shall have the right to an attorney at his/her own expense or, if indigent, counsel will be appointed to the extent that such is available. [TCR 93-96, 11-73]

7-104 Hearing On The Petition.

1. Unless waived by the parties, a hearing on the petition shall be held within sixty (60) days of the day on which the petition was filed.
2. Final adjudication on a petition must be held within one hundred twenty (120) days of the petition being served upon the respondent.
3. The judge who presides over the hearing shall:
   a. Hold the hearing in the presence of the respondent or respondent's attorney;
   b. Ensure that a complete record of the hearing is made and placed in the Court file;
   c. Admit as evidence into record any statements or reports of physicians, psychiatrists, clinical psychologists or other medical, mental health and substance abuse practitioners and oral testimony introduced by interested parties either in support of or in opposition to the proposed treatment and/or hospitalization; and
   d. In support of any Court-ordered disposition involving commitment to a facility for the purpose of inpatient treatment and/or hospitalization, ensure that the quantum of proof admitted and supportive of any such disposition is constituted by clear and convincing evidence that the respondent is an individual requiring treatment, as defined in Section 7-101 herein. [TCR 93-96, 11-73, 14-08]

7-105 Disposition.

1. Upon completion of the hearing on the petition, the Court may order any one or any combination of the following dispositions based upon the evidence admitted into the record:
   a. Dismissal of the petition if the Court determines that the respondent is not an individual requiring treatment.
   b. Commitment of the respondent to a facility, located within or outside of the exterior boundaries of the Winnebago Indian reservation, for the purpose of securing appropriate inpatient treatment and/or hospitalization.
   c. Participation by the respondent in a periodic outpatient alcohol or drug treatment program, with the extent and term of such participation to be determined by the alcohol or drug treatment center.
   d. When the Court orders inpatient treatment, hospitalization or outpatient alcohol or drug treatment meetings, the Court order shall be enforced by reservation law enforcement, with such enforcement to include arrest should the respondent fail to comply with such order. [TCR 93-96, 11-73, 14-08]

7-106 Emergency Protective Custody.

1. A law enforcement officer may take a person into emergency protective custody if the law enforcement officer has probable cause to believe that a person is an individual requiring treatment within the meaning of Section 7-101(4)(a) of this Article and that the person might cause physical harm to himself, another or another's property before a petition can be filed and reviewed by the Tribal Court as provided for in Section 7-102(3) of this Article.
2. A person taken into emergency protective custody shall be placed in a secure mental health facility if possible. If placement in a secure mental health facility is not possible, the person shall be held in a detention facility, provided that such person shall be observed by a sworn officer or detention staff to ensure that he/she does not harm him/herself or others, or others do not harm him/her.
3. The law enforcement officer who placed the person in emergency protective custody shall file a request with the Tribal prosecutor to file a petition for commitment in regard to the person pursuant to Section 7-102(1) of this Article. This request shall be filed no later than the next

business day following commencement of the emergency protective custody action. The request shall set forth the facts upon which the law enforcement officer reached his/her determination of probable cause for the emergency protective custody.

4. If the Tribal prosecutor deems the person to not be an individual requiring treatment within the meaning of Section 7-101(4)(a), the Tribal prosecutor shall decline to file a petition and that person shall be released immediately. If the Tribal prosecutor deems the person to be an individual requiring treatment within the meaning of Section 7-101(4)(a), he/she shall file a petition pursuant to Section 7-102(1) of this Article.

An order of the Court that is issued based upon a petition filed pursuant to this Section 7-106 shall be subject to the same requirements set forth in Section 7-102(3).

[TCR 93-96, 11-73, 14-08]

TITLE 7
ARTICLE 3
ANIMALS
(Revised March 9, 2011)

7-300 Definitions.
7-301 Offices designated.
7-302 Licensing of dogs and cats.
7-303 Breeder or Kennel permits.
7-304 Rabies certification of vaccination required.
7-305 Fee waiver.
7-306 Display of tag.
7-307 Transfer or change of ownership.
7-308 Duplicate tag.
7-309 Removal of license tags.
7-310 At large prohibited.
7-311 Spay and Neuter.
7-312 Impoundment and ticketing.
7-313 Disposition of animals.
7-314 General prohibitions and duties.
7-315 Animal care; animal cruelty.
7-316 Release or adoption of animals.
7-317 Release of unsterilized animals.
7-318 Number of animals.
7-319 Non-indigenous birds.
7-320 Impoundment fees.
7-321 Redemption.
7-322 Injured animals at large.
7-323 Confinement of animals.
7-324 Dog pens.
7-325 Conditions of pens and premises.
7-326 Animal bites.
7-327 Nuisance animals.
7-328 Dangerous animals.
7-329 Determination of vicious animal, dangerous animal, potentially dangerous animal; notice to owner.
7-330 Vicious dogs.
7-331 Appeal procedure.
7-332 Requirements for dangerous animals; penalties.
7-333 Animal fighting or attack training; penalty.
7-334 Keeping of innately wild animals.
7-335 Wildlife protection.
7-336 Keeping of exotic animals.
7-337 Keeping of livestock.
7-338 Keeping of animals for which no licensed, approved rabies vaccine is available.
7-339 Kennel standards.
7-340 Harboring of strays.
7-341 Trapping animals.
7-342 Rabies reports; examination; quarantine.
7-343 Civil liability of owner for damages caused by the owner's dog, cat or other domesticated animal.
7-344 Sovereign immunity of the Tribe.
7-345 Penalties.

7-300 Definitions. For the use in this Article, the following terms are defined as:

1. "Abandon" means any person in possession of an animal who knowingly refuses to provide care for the animal as defined by this Article, including failing to reclaim an animal from Animal Control Services.
2. "Animal" means any living reptile, amphibian, bird, or non-human mammal, both domestic and wild.
3. "Animal Control" or "Animal Services Officer" means any person designated by the Winnebago Tribe of Nebraska, Village of Winnebago, State of Nebraska, a municipal government or a humane society as a law enforcement officer who is qualified and authorized to perform such duties under the Winnebago Tribal Code, Village Ordinances, and/or applicable State statutes.
4. "At heel" means under the voice of control and within fifteen feet of the owner or person in custody of the animal.
5. "At large" means any animal found off the premises of its owner and not confined within a house, building, or other secured enclosure, kennel, veterinary hospital, or not restrained by the owner or

responsible person by leash or lead, or "at heel" beside a person and obedient to that person's command.

6. "Breeder" means a person who breeds animals for sale, trade, or barter and holds a permit to do so from the Winnebago Tribe of Nebraska pursuant to Section 7-303 of this Article. Breeder shall also mean any person who maintains an unaltered (unsterilized) dog or cat and breeds such animals for any consideration of profit, fee, or compensation.
7. "Cat" means both female and male, which are members of the feline or cat family (Felis Catus), whether neutered or not.
8. "Dangerous Animal" means any animal, which according to the records of the appropriate authority, has (a) inflicted injury on a human, domestic animal, or livestock without provocation on public or private property; or (b) killed a domestic animal without provocation while off the owner's property; or (c) been previously found to be Potentially Dangerous, the owner having received notice of such, and the animal subsequently aggressively bites, attacks, or endangers the safety of humans, domestic animals, or livestock.
9. "Dart" means the process whereby a drug of a sedative nature is delivered to and injected into an animal by means of projectile shot from a rifle or gun, for the purpose of subduing or rendering an animal unconscious for capture.
10. "Dog" means both female and male, which are members of the canine or dog family, whether neutered or not.
11. "Enclosure" means a fence or structure forming or causing an enclosure suitable to adequately confine any animal. Any animal deemed vicious, dangerous, or potentially dangerous must meet enclosure requirements as outlined in Section 7-324.
12. "Exotic Animal" means an animal that is not indigenous to the United States, excluding captive bred species of common cage birds, or any other animal, fish, or reptile that is commonly sold or traded as a companion animal or household pet.
13. "Feral" means any animal that was once domesticated but has returned to a wild state. An animal need not be dangerous or vicious to be considered "feral."
14. "Health Department" and "Health Officer" means the Winnebago Tribal Health Department or a designee employee of the same department.
15. "Injury" means any physical injury that results in need for professional medical treatment.
16. "Kennel," "Cattery," or "Pet Shop" means any premises wherein any person that engages in the business of boarding, breeding, buying, letting for hire, raising, training for a fee, or selling dogs, cats, birds, rodents, reptiles, fowl, fish, or other small animals for profit, whether operated separately or in conjunction with another business enterprise.
17. "Livestock" means any animal ordinarily used for agricultural purposes including but not limited to horses, ponies, mules, burros, jacks and jennies, cows, bulls, calves, heifers, sheep, goats, swine, hogs or pigs but excepting pot-bellied pigs kept as household pets in a sanitary manner and otherwise in accordance with the provisions of this Article.
18. "Muzzle" means when required by this Article, a device covering the upper and lower jaws of an animal and made of appropriate material with sufficient strength to restrain the animal from biting. No such muzzle employed shall be made from material or maintained on the animal in any manner so as to cut or injure the animal.
19. "Nuisance Animal" means any animal, which as a result of its actions, causes a human being any loss of rights or privilege.
20. "Owner" means any person or persons, firm, association or corporation or parent of a child that owns, keeps, shelters, possesses or harbors one or more animals. An animal shall be considered harbored if it is fed or sheltered for three consecutive days or more.
21. "Potentially Dangerous Animal" means any animal which, when unprovoked:
    a. Bites a human, domestic animal, or livestock either on public or private property; or
    b. Chases or approaches a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack, or any animal that has a documented

history to attack unprovoked, cause injury, or has otherwise threatened the safety of humans or domestic animals.

22. "Severe Injury" means any physical injury that results in disfiguring lacerations requiring or that will require multiple sutures or cosmetic surgery, or one or more fractured bones, or that creates a potential threat to the life or health of the victim.
23. "Stray" means any animal which does not have affixed to it a collar with an identification tag with owner's name, address, and phone number and a current Winnebago Tribe of Nebraska license tag, and/or identifying, traceable tattoo or microchip.
24. "Tether" means a rope, chain or cable of appropriate strength that is firmly anchored to the bed of an open bed pickup truck or similar vehicle in at least two places. A tether is used to restrain the animal and is fastened to the animal by means of a harness and is to be the appropriate length as to afford the animal freedom to move about the vehicle, but to restrict the animal to a set radius to prevent it from reaching either the side or the rear of the vehicle so that the animal cannot be thrown, fall from, or jump from the vehicle.
25. "Tribe" means the Winnebago Tribe of Nebraska.
26. "Vaccination" means an injection of any vaccine for rabies approved by the state veterinarian, and administered by a licensed veterinarian or agent of the Tribal Health Department, or a public clinic, which may be established for this purpose.
27. "Vicious Animal" means:
    a. Any animal which, without provocation, approaches in a manner of attack, bites or otherwise inflicts severe injury on a human being, domestic animal, or livestock on public or private property;
    b. Any animal with known propensity, tendency or disposition to attack without provocation human beings, domestic animals or livestock;
    c. Any animal owned or harbored primarily or in part for the purpose of animal fighting or any animal trained for animal fighting;
    d. Any animal which has been previously found to be dangerous, the owner having received notice of such, and the animal again aggressively bites, attacks, or endangers the safety of humans, domestic animals or livestock;
    e. Notwithstanding the above definition, no animal shall be declared vicious, dangerous, or potentially dangerous if the person attacked or bitten by said animal was teasing, tormenting, abusing, or assaulting the animal or was committing or attempting to commit a crime; or if the animal was protecting its young; and
    f. Any dog that has been deemed to be a "vicious animal" solely because of its breed or other inherent characteristic as identified by this Code.
28. "Wild Animal" means any living member of the animal kingdom, including those born or raised in captivity, except the following: human beings, domestic dogs, (excluding hybrids with wolves, coyotes, or jackals), domestic cats (excludes hybrids with ocelots or margays), livestock, and captive bred species of common cage birds. Any domestic animal that has become feral shall also be considered a "wild animal." [TCR 90-73, 08-56, 11-70]

7-301 Offices designated.

1. The Office of Environmental Health of the Winnebago Tribe of Nebraska Health Department is designated as the official agent for the Winnebago Tribe for the purpose of issuing animal licenses, issuing permits, and collecting fees therefore pursuant to the provisions of this Article. The Environmental Health Office shall work in coordination with the Animal Control Department in issuing licenses and maintaining animal control records.
2. The Chief Administrative Officer of the Winnebago Tribe of Nebraska shall have the authority to enter into agreements with third parties for collection of license fees, for capture, transport,

impoundment and disposition of animals found within the Winnebago Reservation and for other purposes relating to enforcement of this Article. [TCR 90-73, 08-56]

7-302 Licensing of dogs and cats. It shall be unlawful for the person to own, keep, or harbor a dog or cat within the boundaries of the Winnebago Reservation, including the Village limits of Winnebago, without having first registered the animal with the Tribal Environmental Health Office and paid the annual license fee as stated in the fee schedule established by the Environmental Health Office for all dogs and cats six (6) months of age or older:

1. Within thirty (30) days after every dog, cat or other domesticated animal reaches six months of age, or is under six months and is no longer with its dam, every owner of such dog, cat or other domesticated animal shall procure a Tribal animal license each year from the Environmental Health Office of the Winnebago Tribe.
2. To secure a license, an owner must complete a registration form, provide proof of current legal rabies vaccination, and pay a registration fee as established by the Environmental Health Office each year.
3. Upon registration, the Environmental Health Office shall furnish the owner of the dog or cat with a tag of distinctive design with the serial number of the dog or cat. The Environmental Health Office shall keep this serial number on file.
4. All licenses shall expire one year from the date of issuance.
5. Animal licenses are non-transferable.
6. Upon the death of the dog or cat, the owner shall advise the Environmental Health Office which shall void the registration of the animal.
7. Proof of registration must be provided by the animal owner upon demand by an Animal Control Officer or other law enforcement officer.
8. Registration fees collected by the Environmental Health Office shall be used to help defray the costs of the administering the program, including purchase of vaccines, tags and other supplies. [TCR 90-73, 08-56]

7-303 Breeder permit. A breeder's or kennel permit may be issued to those applicants that satisfy the following criteria:

1. The person intends to keep the animals for purposes of breeding and selling the animals as household pets or operates a business providing temporary boarding to other person's household pets.
2. The person maintains and provides for each animal in its possession the standards of housing, care and feeding as set forth in Sections 7-315 and 7-339.
3. In the case of a breeder permit, the person shall also demonstrate, either through education or experience, knowledge in animal breeding or employs and continuously employs such a person as part of a business. [TCR 11-70]

7-304 Rabies certification of vaccination required. All dogs, cats, and other domesticated animals susceptible to rabies within the boundaries of the Reservation and Village shall be vaccinated against rabies by an accredited veterinarian, Animal Control or Environmental Health Officer. Proof of current rabies vaccination in the form of a tag shall be provided by the owner upon registration of the animal. [TCR 90-73, 08-56]

7-305 Fee waiver. All owners of seeing eye dogs, hearing ear dogs or assistance dogs or other such dogs being used to aid sensory impaired persons or other persons who, upon medical advice, require the use of a service dog, shall not be required to pay an annual license fee, but shall be required to obtain a registration license tag. [TCR 08-56]

7-306 Display of tag.

1. The tag described in Section 7-304 must be attached by the owner to a substantial collar during the term of the license or be displayed by the owner upon demand by an Animal Control Officer or other Law Enforcement Officer.
2. Dogs in fenced exercise yards, on pickets, in buildings, automobiles or under effective control for exercise, work or training will not be required to wear tags or collars, or leashes, if the stated conditions of training, work or exercise are incompatible with the wearing of such articles. [TCR 90-73, 08-56, 11-70]

7-307 Transfer or change of ownership. When the permanent ownership of a dog, cat or other domesticated animal is transferred, the new owner shall, within thirty days of the date of change of ownership, make application for a new license as provided in Section 7-302, regardless of whether or not the dog, cat or other domesticated animal was previously licensed under the provisions of Section 7-302, and shall pay the full annual license fee. [TCR 90-73, 08-56]

7-308 Duplicate tag. Upon the filing of an affidavit that the license has been lost or destroyed, the owner may obtain another tag upon payment of a replacement fee as set by the Environmental Health Department. The officer shall enter the new number assigned in the license record. [TCR 90-73, 08-56]

7-309 Removal of license tags. It is unlawful for any person who is not the owner or the agent of such owner or an officer of the Winnebago Tribe of Nebraska or its agent, acting in an official capacity to remove a license tag from a dog or cat prior to the expiration of the license. [TCR 90-73, 08-56]

7-310 At large prohibited. The owner of an animal shall at all times restrain such animal to prevent it from running at large within the boundaries of the Village of Winnebago. An owner of an at-large animal shall be subject to penalty as set forth under this Article. [TCR 90-73, 08-56]

7-311 Spay and Neuter.

1. All dogs and cats shall be spayed or neutered, as the sex may be, by their owner within thirty (30) days of the owner coming into possession of the dog or cat. Should an owner fail to comply with this Section, Tribal or Village authorities are authorized to seize the dog or cat and have a licensed veterinarian spay or neuter the animal at the owner's expense.
2. If in the opinion of a licensed veterinarian the spaying or neutering procedure is either unnecessary or dangerous to the animal due to age or other condition, no compliance with this Section is required.
3. The requirements of this Section shall apply only after the dog or cat has reached six months of age.
4. This Section shall not apply to livestock or animals owned by a person holding a breeder's permit pursuant to this Article. [TCR 11-70]

7-312 Impoundment and ticketing.

1. An animal found at large within the Village boundaries shall be seized and impounded and, at the discretion of the Law Enforcement Officers, Tribal Conservation Officer, or Animal Control Officer, a citation and/or complaint to appear before the Winnebago Tribal Court to answer charges made thereunder may be served upon the owner.
2. The Animal Control Services Officers or assistants shall take into custody any animal that is not in compliance with Sections 7-302, 7-304, or 7-310. Law Enforcement Officers, Tribal Conservation Officers, or Animal Control Officers shall impound such animal.

3. Unrestrained dogs and nuisance animals may be taken by the Law Enforcement Officers, Tribal Conservation Officers, or Animal Control Officers and impounded in an animal shelter and/or be confined in a humane manner. In the case of animals causing a noise problem and after owner of such animal(s) has been duly notified twice that the problem needs correcting, and such correction has not been put in place, nuisance animal(s) can then be impounded and a notice left at the owner's residence so as to provide the owner with instructions for reclaiming the animal(s).
4. Impounded animals shall be kept for a period of not fewer than five working days, including one Saturday, thereafter kept at the discretion of Animal Control Services.
5. If, by license tag or other means, the owner of an impounded animal can be identified, the Animal Control Officer shall immediately upon impoundment notify the owner by telephone or certified mail, but within two days that, upon payment of impoundment fees, plus cost of food and care, the animal will be returned.
6. Any animal not reclaimed by its owner within three business days shall become the property of the Animal Control Services Program and shall be placed for adoption in a suitable home or humanely euthanized by sodium pentobarbital. The owner is responsible for payment of any fees and/or fines accrued by the animal as outlined in this Article.
7. Upon an owner's conviction of a fourth violation of Section 7-310 involving an unsterilized animal(s), that animal may be sterilized at the owner's expense by a licensed veterinarian of the Animal Control Service, Law Enforcement Officer, Tribal Conservation Officer or Winnebago Tribal Health Department or its designee employee of the same department's choosing.
8. The shelter supervisor shall keep complete and accurate records of the care, feeding, veterinary treatment, and disposition of all animals impounded at the shelter.
9. The owner of an impounded animal who refuses to reclaim his/her animal(s) may be proceeded against for abandonment under the provisions of Section 7-314(5). [TCR 90-73, 08-56, 11-70]

7-313 Disposition of animals.

1. After the expiration of the applicable impoundment period or quarantine, except as otherwise provided in this Article, an unredeemed animal, whether licensed or unlicensed, may, at the discretion of the Animal Control Officer, be disposed of in a humane manner.
2. During the applicable impoundment period or quarantine, if the animal appears to be suffering from rabies or infected with disease, or is mortally injured, an unredeemed animal, whether licensed or unlicensed, may, at the discretion of the Animal Control Officer, be disposed of in a humane manner.
3. If the animal is injured or destroyed because it is vicious, the Animal Control Officer or the Conservation Officer shall dispose of the animal. If other persons destroy an injured or vicious animal, the Animal Control Officer or Conservation Officer shall be contacted who shall dispose of the animal.
4. If the animal is found dead, the Animal Control Officer or Conservation Officer shall dispose of the animal.
5. In the event that the animal has bitten a person, the Health Officer must be consulted before the animal is disposed of.
6. Disposition of injured or diseased animals shall be at the discretion of Animal Control.
7. No civil liability shall arise where a suffering animal is humanely destroyed. [TCR 90-73, 08-56]

7-314 General prohibitions and duties.

1. No person shall aid or cause any animal whether owned by such person or not, to escape confinement or impoundment, whether such confinement or impoundment be upon such person's property or that of another, by opening any gate, door or window, by making an opening in any fence, enclosure or structure, by unleashing such animal, or by any other means whatsoever.

2. It shall be prohibited for any person to permit or allow an animal owned by that person or under that person's custody or control to defecate upon public property, park property, public right-of-way, or the property of another, unless such person shall immediately thereafter clean up, remove and dispose of the feces so deposited.
3. It shall be the duty of every person owning or having the custody and control of an animal to physically restrain the animal within an enclosure or upon a leash when such animal is left unattended outside or is not at heel. The animal must be restrained so as to prevent the animal from leaving the premises of its owner or from coming in contact with public right-of-way or the property of another.
4. It shall be prohibited for any person in any manner to interfere with any employee or designated representative of the Winnebago Tribe so as to hinder, delay or prevent his/her executing his/her duties pursuant to this Section.
5. No person shall abandon any animal within the Village limits of Winnebago or so that the animal may find its way into the Village limits of Winnebago except the person may deliver the animal to another person who will accept ownership and custody, or the person may deliver the animal to an animal shelter. [TCR 08-56]

7-315 Animal care; animal cruelty.

1. All animals, must be provided with appropriate shelter and a safe, non-injurious environment, per Federal Animal Welfare Act Guidelines. Shelters and enclosures, whether temporary or permanent, must be constructed so that they are the appropriate size, strength, and material that allows the animal to stand, stretch, turn around, and lie down freely. The shelters, enclosures, and fenced areas for animals must be kept free of hazards such as trash, sharp edges, protruding nails, broken or splintered wood, metal or glass shards, machinery, loose wires, or any other material that may cause injury.
2. No person shall give away any live animal, fish, reptile, or bird as a prize for or as inducement to enter any contest, game, or other competition or to induce a sale, or as an inducement to enter into any business agreement whereby the offer was for the purpose of attracting trade.
3. Any person who, as the operator of a motor vehicle, strikes a domestic animal shall stop at once and render such assistance as may be possible, and shall immediately report such injury or death to the animal's owner. In the event the owner cannot be ascertained and located, such operator shall at once report the accident to the appropriate law enforcement agency or to Animal Control Services.
4. No person shall expose any known poisonous substance, whether mixed with food or not, so that the same shall be liable to be eaten by any animal, provided that it shall not be unlawful for a person to expose on his own property common rodent poison mixed only with vegetable substances.
5. No person shall fail to provide his animals with sufficient, good, wholesome and nutritious food, potable water in sufficient quantities, proper air, shelter which provides protection from the weather which includes four sides with opening, roof and floor; veterinary care when needed to prevent suffering, and humane care and treatment.
6. No animal may be kept on flooring of wire grid.
7. No person shall beat, cruelly ill-treat, torment, overload, overwork, or otherwise abuse an animal, or cause, instigate, or permit any dogfight, cockfight, bullfight, or other combat between animals and/or humans.
8. No owner, keeper, or harborer of an animal shall abandon such animal.
9. No person shall transport or carry any animal by motorized means unless the animal is safely enclosed within the vehicle or trailer, or enclosed in a portable kennel, crate, or dog box designed for this purpose, which is then fastened by a secure and appropriate means to the bed or the chassis of the vehicle. Dogs may be transported in open beds of pickup trucks provided they are

secured in the vehicle by means of a humane cross tether and/or harness as set forth in Section 7-300(23). In all cases where animals are transported by motorized vehicles, it must be in a safe and humane manner that will prevent the animal from falling from, being thrown from, or jumping from the motorized vehicle or trailer being pulled by such.

10. No person shall confine any animal in a parked vehicle if the outside air temperature is higher than 80 degrees Fahrenheit, unless the vehicle is running and the air conditioner is working properly. Animal Services Officers or other Law Enforcement Officers shall not be liable for any damage resulting to the vehicle when such confined animals must be removed for their safety and well being.
11. In addition to the above provisions, animal cruelty shall be prohibited and punishable as set forth in Title III, Section 3-754 of the Winnebago Tribal Code. [TCR 08-56]

7-316 Release or adoption of animals. Animals not claimed by the owner within a prescribed period of time become the property of Animal Services and may be placed by Animal Services with a responsible potential owner who will provide a suitable home for the animal(s) in compliance with this Article. If such person chooses not to keep the animal(s), the animal(s) must be returned to Animal Services. Once an animal has become the property of Animal Services, ownership of such animal may never be transferred to persons representing medical laboratories, or any other entity for experimental process. Animal Services does not guarantee the health or temperament of any animal adopted from the shelter. [TCR 08-56]

7-317 Release of unsterilized animals. It shall hereafter be unlawful for any pound, shelter, or humane organization to release any unsterilized animal to a new owner unless a contract to spay or neuter such animal has been signed by the person acquiring the animal. A licensed, accredited veterinarian shall perform the sterilization by the date stipulated. However, upon medical advice of a licensed, accredited veterinarian, the owner may request and receive an extension of time up to thirty (30) days. A copy of the signed contract shall be kept on file at the office of Animal Services. The signed contract shall be binding, and failure to comply is unlawful. In such case, the animal described therein shall be returned to the releasing agency upon demand. Ownership of said animal reverts to the releasing agency, and no claim may be made to recover expenses incurred for maintenance of the animal, including the initial procurement cost. [TCR 08-56]

7-318 Number of animals.

1. It shall be unlawful for any person to own, keep, or harbor more than five (5) dogs and/or cats over the age of 16 weeks, or more than 10 common cage birds over the age of 12 weeks within the limits of the Village of Winnebago.
2. It shall be unlawful for any person to own, keep, or harbor more than eight (8) dogs and/or cats over the age of 16 weeks, or more than 10 common cage birds over the age of 12 weeks within the boundaries of the Winnebago Reservation.
3. This provision shall not apply to proprietors of animal hospitals and veterinarians when such animals are kept upon premises used by such business. This provision shall not apply to owners of dogs, cats, or common cage birds who are breeders of such or kennel operators, who hold a permit issued pursuant to Section 7-303.
4. Keeping on the premises more than five (5) and eight (8) dogs and/or cats over the age of 16 weeks or more than 10 common cage birds over the age of 12 weeks without permit shall be prima facie evidence of violation of this Section.
5. Any person found to be in violation of this Section of this Article shall, at the discretion of Animal Services, law enforcement officers, and Tribal conservation officers have a period of not less than ten (10) days or more than ninety (90) days to reduce the number of such animals through legal channels.

6. Any dog or cat under the age of 16 weeks, or common cage birds under the age of twelve (12) weeks shall not count toward the five (5) and eight (8) animal limit of this Section.
7. Any number of dogs and/or cats, the behavior of which collectively causes a nuisance as set forth in Section 7-327, shall be collectively considered "nuisance animals." [TCR 08-56, 11-70]

7-319 Non-indigenous birds. All non-indigenous birds must be banded according to federal regulations. [TCR 08-56]

7-320 Impoundment fees. There shall be a minimum charge of forty dollars ($40.00) for each animal taken and impounded on the first occasion an animal is impounded; there shall also be a fee of three dollars ($3.00) per day for impoundment for up to five days if not suspected rabid, or four dollars ($4.00) per day up to fifteen days if suspected rabid. The fees shall be paid to the Winnebago Tribe of Nebraska, or other designated entity which provides the services herein pursuant to Section 7-301(2). Civil penalties and court costs are addressed in Section 7-345 and are not "impoundment fees" within the meaning of this subsection. [TCR 90-73, 08-56, 11-70]

7-321 Redemption.

1. Any animal held or impounded at the animal control facility may be redeemed to the owner thereof upon:
   a. Proof of ownership;
   b. Payment of the board and keep fee, impoundment fee, and any other related costs incurred by the Winnebago Tribe or other designated entity;
   c. Presentation of the Tribal license which shall not be issued until proof of a current rabies vaccination is presented; and
   d. Showing proof in the form of a certificate issued and signed by a licensed veterinarian or the health officer that such animal has been properly vaccinated for rabies, if required by law, or by posting a twenty dollar ($20.00) vaccination bond which shall be refunded if a rabies vaccination is obtained.
2. Application for vaccination bond redemption and for refund of the bond must be made within five business days of the posting of the bond. Failure of the owner to redeem such bond shall be prima facie proof that vaccination has not been obtained as required by this Article.
3. For the purposes of this Section, the Law Enforcement Officer, Conservation officer, or Animal Control Officer may give written notice to the owner personally, by posting a written notice at the owner's residence, or by mail. [TCR 90-73, 08-56]

7-322 Injured animals at large.

1. In the event that an injured animal, licensed pursuant to this Article, is found at large, the Law Enforcement Officer, Conservation Officer or Animal Control Officer may cause the animal to be darted, if necessary, and may take the animal into custody.
2. In the event the injured animal is unlicensed, or in the event that the Law Enforcement Officer, the Conservation Officer, or the Animal Control Officer is unable to determine the ownership of the animal, or is unable to contact the owner, or should the owner refuse to either take custody of such injured animal or cause it to be transported to a veterinarian, the Law Enforcement Officer, Conservation Officer or the Animal Control Officer shall transport such animal to the nearest available veterinarian for treatment.
3. If an injured animal at large cannot be darted and it displays vicious tendencies which would make its capture by any other means unduly hazardous, the Law Enforcement Officer, Conservation Officer or the Animal Control Officer may cause the immediate destruction of such animal.

4. In the event that an animal, if found at large, is so seriously injured as to make its recovery unlikely, the Law Enforcement Officer, Conservation Officer, or the Animal Control Officer may, in his/her discretion, immediately destroy such animal in a humane manner in the interest of humane treatment.
5. In the event that the Law Enforcement Officer, Conservation Officer, or Animal Control Officer transports an injured animal to the nearest veterinarian pursuant to the foregoing, he/she shall thereupon offer to give custody of said animal to the veterinarian for treatment at the veterinarian's cost. In the event that the veterinarian refuses to take custody of such animal, or advises that it would be humane to destroy it, the Animal Control Officer shall be directed to destroy said animal as expeditiously as possible in the interest of humane treatment.
6. After an animal has been humanely destroyed under this Section, the animal shall be subject to autopsy by local or state health officials to determine the cause of said animal's injuries or viciousness.
7. Upon taking an injured animal into custody or destroying an animal pursuant to this Section, the Law Enforcement Officer, Conservation Officer or Animal Control Officer shall notify in writing the animal's owner of its location and condition. Upon being so notified, the owner of such animal shall either immediately take custody of such animal or cause the animal to be transported to a veterinarian. [TCR 08-56]

7-323 Confinement of animals. From and after the passage of this Article, any person owning animals, whether vaccinated or unvaccinated, licensed or unlicensed, shall confine such animal on owner's property within an adequate fence or enclosure, or within a house, garage or other building. Animals shall not be tied or chained to doghouse or other stationary objects for any period of time exceeding twelve hours. [TCR 08-56]

7-324 Dog pens. Outdoor dog pens shall be located fifty (50) feet from any dwelling, other than the person's owning or controlling the dog. There shall be at least one hundred fifty (150) square feet in such pen for each dog, over six (6) months of age, kept therein. [TCR 08-56]

7-325 Conditions of pens and premises.

1. It shall be unlawful for any person keeping or harboring animals to fail to keep the premises where such animals are kept free from offensive odors to the extent that such odors are disturbing to any person residing within reasonable proximity of said premises. It shall be unlawful to allow premises where animals are kept to become unclean and a threat to the public health by failing diligently and systematically to remove all animal waste from the premises. It shall be unlawful to allow animals on premises where animals are kept to become infested with ticks, fleas or other vermin, by failing to diligently and systematically apply accepted methods of insect and parasite control.
2. Birdcages must be kept free from drafts and sudden chills. Cages must be cleaned daily to avoid airborne diseases to persons and other birds. Birds must have a constant supply of potable water and wholesome food appropriate to the particular species. No person may have an outside aviary unless he/she is a licensed rehabilitator. Outside aviaries must follow state and federal guidelines and have the approval of Animal Services. [TCR 08-56]

7-326 Animal bites.

1. Any animal which has bitten a person is a rabies suspect, and the owner or custodian shall immediately release such animal for quarantine confinement in a veterinary hospital approved by the Tribe or at Animal Services for a period of ten (10) days. Such quarantine may also be carried out within an enclosure approved by Animal Services.

2. When any animal has bitten, scratched, or otherwise attacked a person, the person or anyone having knowledge of such incident shall immediately notify Animal Services.
3. The animal may be quarantined for a period of at least (10) days at the expense of the owner, or ownership may be relinquished, and the animal euthanized, and its head taken to the State/Tribal Health Department for a pathological examination.
4. The quarantine may be on the premises of the owner at the discretion of and under supervision of Animal Services if an appropriate/suitable place is available. Unclaimed stray animals may be humanely euthanized within twenty-four (24) hours or one (1) working day and the head removed and taken to the State/Tribal Health Department for pathological examination. [TCR 08-56]

7-327 Nuisance animals. Owners of nuisance animals shall be subject to fine as set forth under this Article. Nuisance animals are any animals which infringe upon the rights of another animal or a person, or:

1. Molest passersby or passing vehicles;
2. Trespass on school grounds;
3. Are repeatedly at large;
4. Damage private or public property;
5. Bark, whine, or howl in an excessive, continuous, or untimely fashion;
6. Cause fouling of the air by odor and thereby creates unreasonable annoyance or discomfort to neighbors or others in close proximity to the premises where animal is kept or harbored; or
7. Interfere with refuse collection or other service personnel.

For purposes of this Section, each day that a violation occurs shall be considered a separate violation, and if a separate citation is issued for each violation, each such separate violation may be penalized separately. [TCR 08-56]

7-328 Dangerous animals. It shall hereafter be unlawful for any person, to keep within the corporate limits of the Village and Reservation boundaries of Winnebago, Nebraska, any dangerous animal, unless such animal shall be secured and maintained as set forth in Section 7-332. [TCR 08-56, 11-70]

7-329 Determination of vicious animal, dangerous animal, potentially dangerous animal; n**otice to owner.**

1. The Office of Animal Services shall be responsible for determining whether an animal is vicious, dangerous, or potentially dangerous. The Animal Services department shall consider the overall behavior of the animal in making this determination, including whether the animal has engaged in one or more attacks that caused severe injury or property damage.
2. When, in the judgment of Animal Services, any animal is determined to be a Vicious Animal, Dangerous Animal or Potentially Dangerous Animal, Animal Services shall give notice of said determination to the owner who shall forthwith comply with the provision of this Section concerning such determination. After notice to the owner or if after documented diligent effort, no owner can be located, to protect the public from imminent danger to persons or property, at the discretion of Animal Services, such animal may be humanely destroyed without regard to any time limitation otherwise established herein.
3. No animal shall be declared Vicious, Dangerous, or Potentially Dangerous if a domestic animal which was bitten or attacked was teasing, tormenting, abusing or assaulting the animal. No animal shall be declared vicious if the animal was protecting or defending a human being within the immediate vicinity of the animal from an unjustified attack or assault or if the animal was protecting its young. [TCR 08-56]

7-330 Vicious dogs.

1. Vicious dogs, as defined in this Section, are hereby banned from the boundaries of the Winnebago Reservation and may not be owned or kept within the Winnebago Reservation boundaries.
2. Dog breeds identified in this Section are hereby deemed to be vicious and may not be owned or kept within the Winnebago Reservation. Breed specific dogs are defined as any of the following:
   a. American Pit Bull Terrier.
   b. Staffordshire Bull Terrier.
   c. American Staffordshire Terrier.
   d. Rottweiler.
   e. Doberman.
   f. Wolf dog/hybrid.
   g. Any dog whose sire or dam is a dog of a breed, which is defined in this Section.
   h. Any dog whose owner registers, defines, admits, or otherwise identifies said dog as being of a breed identified in this Section.
   i. Any dog conforming, or substantially conforming to the breed of American Pit Bull Terrier, American Staffordshire Terrier, or Staffordshire Bull Terrier as defined by the United Kennel Club or American Kennel Club.
   j. Any dog which is of the breed commonly referred to as "pit bull" and commonly recognizable and identifiable as such. [TCR 08-56]

7-331 Appeal procedure. Although an appeal of a vicious animal determination will not stay such determination, said owner of a vicious animal may appeal determination by filing a Notice of Appeal with the Winnebago Tribal Court within five (5) days thereof. No animal found to be vicious pursuant to this Article shall be destroyed or otherwise disposed of until the appeal period has expired and/or final disposition of any appeal filed pursuant to this Section. The animal shall however be impounded during the appeal period and while any appeal is pending with non-refundable costs of impoundment to be paid by the owner. [TCR 08-56]

7-332 Requirements for dangerous animals; penalties.

1. The following conditions are required for all owners of dangerous animals:

   a. <u>Confinement</u>. Dangerous animals must be confined in an adequate enclosure. An enclosure in which a dangerous dog or animal is kept must have secure sides and a secure top attached to the sides. If the pen or structure has no bottom secured to the sides, the ground beneath the gate shall be secured by embedded posts and the sides must be embedded into the ground no less than two (2) feet, unless such pen has a concrete bottom in which case the sides need only be embedded two (2) inches deep into the concrete. All such pens or structures must be adequately lighted and kept in a clean and sanitary condition. Any stationary enclosure or pen shall be at least two (2) square feet per pound/per animal so confined. This structure must be species-appropriate.
   b. <u>At large, leash and muzzle</u>. The owner of a dangerous animal shall not permit the animal to go unconfined unless the animal is securely muzzled and restrained by a chain or leash, while under the physical restraint of a person capable of restraining said animal, or kept in an adequate enclosure as outlined in Section 7-323. The muzzle shall be made in a manner that will not cause injury to the animal or interfere with its vision or respiration, but shall prevent it from biting any human or animal.
   c. <u>Signs</u>. The owner of a dangerous animal shall display in a prominent place on his or her premises a clearly visible warning sign indicating that there is a dangerous animal on the

premises. A similar sign is required to be posted on each side of the pen, enclosure or kennel of the animal. The sign must be capable of being read from the public highway or thoroughfare and the sign shall include a non-verbal symbol warning of the presence of a dangerous dog.

2. Penalties. Violations of Sections 7-332(a), (b), or (c) shall result in a penalty of not more than five hundred dollars ($500.00). [TCR 08-56, 11-70]

7-333 Animal fighting or attack training; penalty.

1. No person, shall possess, harbor, or maintain care or custody of any dog, or other animal for the purpose of animal fighting, nor shall any person train, torment, badger, bait or use any animal for the purpose of causing or encouraging the animal to attack human beings, domestic animals, or livestock. This does not include accredited animal training programs for police use.
2. For purposes of this Section, each day that a violation occurs, shall be considered a separate offense, and if a separate citation is issued for each offense, each such separate offense may be punished separately. A criminal charge does not discharge liability in a civil suit for the same offense.
3. Penalty. Violations of Section 7-333(a) shall result in a penalty of not more than one thousand dollars ($1000.00). [TCR 08-56, 11-70]

7-334 Keeping of innately wild animals. As used in this Section, the term innately wild animals shall include lions, tigers, cougars, panthers, bears, wolves, wolf-hybrid, cat-hybrid and other non-domestic animals of an untamable disposition; notwithstanding that their natural wildness may be intermittently dormant, as said wildness is likely to be awakened at any time, suddenly and unexpectedly. The failure to specifically list any animal in this subsection will not preclude such animal from being deemed an innately wild animal of untamable disposition. The possession, maintenance, or keeping of innately wild animals within the Village and Reservation boundaries of Winnebago, Nebraska is hereby prohibited. This Section shall not apply to any zoo, circus, or sanctuary complying with applicable laws and regulations and keeping said innately wild animals for the education of the public. [TCR 08-56]

7-335 Wildlife protection. It is unlawful for any person to hunt, chase, shoot, wound, kill, net, trap, snare or in any other manner whatsoever catch any wildlife within the Reservation boundaries of Winnebago except as may be allowed pursuant to the rules, regulations and licensing requirements of the Winnebago Tribal Wildlife and Parks Commission. However, should it be determined by a Conservation Officer or Animal Services that a wild or domestic animal is causing a nuisance or creating verifiable property damage, humane live traps may be used to capture and translocate, or impound such animal. [TCR 08-56]

7-336 Keeping of exotic animals. The keeping of exotic animals, as defined in Section 7-300(12), shall be prohibited. [TCR 08-56]

7-337 Keeping of livestock. It shall be unlawful for any person to keep, maintain, or permit to run at large any livestock within the corporate limits of the Village of Winnebago. [TCR 08-56]

7-338 Keeping of animals for which no licensed, approved rabies vaccine is available. The keeping of animals for which no licensed, approved rabies vaccine is available shall be prohibited. [TCR 08-56]

7-339 Kennel standards.

1. All kennels, as defined herein, shall in addition to the other requirements of this Article, comply with minimum standards of this Section. Failure to meet these standards shall be grounds for denial of a permit or revocation of a permit. A kennel is defined as an establishment wherein any person engages in the business of boarding, breeding, buying, grooming, letting for hire, training for a fee, or selling dogs or other animals.

STANDARDS:

a. Enclosures must be provided which shall allow adequate protection against weather extremes. Floors of buildings, runs and walls shall be of an impervious material to permit proper cleaning and disinfecting.
b. Building temperature shall be maintained at a comfortable level. Adequate ventilation and adequate lighting shall be maintained.
c. Each animal shall have sufficient space to stand up, lie down and turn around without touching the sides or tops of cages.
d. Cages are to be of material and construction that permits cleaning and sanitizing.
e. Cage floors are to be of concrete, and unless radiantly heated, shall have a resting board or some type of bedding.
f. Runs shall provide an adequate exercise area and protection from the weather. Runs shall have an impervious surface.
g. All animal quarters and runs are to be kept clean, dry and in a sanitary condition.
h. The food shall be free from contamination, wholesome, palatable and of sufficient quantity and nutritive value to meet the normal daily requirements for the condition and size of the animal.
i. All animals shall have potable water available at all times. Water vessels shall be mounted or secured in a manner that prevents tipping and be of the removable type.

2. The Office of Environmental Health is authorized to establish procedures and applications for the issuance of permits for the operation of kennels. [TCR 08-56]

7-340 Harboring of strays.

1. Any person who harbors any animal found astray within the Reservation shall, within twenty-four hours, notify the Animal Services department.
2. Harboring or feeding an animal for twenty-four hours or more shall constitute ownership by the person feeding the animal. [TCR 08-56]

7-341 Trapping animals.

1. No person may set traps in the Village proper for purposes of apprehending wild or domesticated animals. This Section does not prohibit: trapping mice, rats, other household vermin, moles or other underground pests so long as the traps used may be triggered only by subsurface action, or setting of traps in the line of duty by a Conservation Officer or an Animal Control Officer or with written permission from and under supervision of a Conservation Officer or an Animal Control Officer or licensed pest control operator. [TCR 08-56]

7-342 Rabies reports; examination; quarantine.

1. Report by owner. It shall be the duty of the agent or owner of any dog, cat or other domesticated animal suspected of being infected with rabies or other diseases communicable to human beings,

or any animal that has attacked, bitten or caused any skin abrasion upon any person, to report the same at once to the Animal Services or Health Department.

2. Report by physician. It shall be the duty of any physician to immediately transmit to the Animal Services or Health Department any information that may come to him/her in his/her professional capacity with reference to any patient of his/hers having been attacked, bitten or having any skin abrasion caused by any dog, cat or other domesticated animal.
3. Report by others. It shall be the duty of any person so attacked or bitten or who has any skin abrasion caused by being attacked or bitten by any dog, cat or other domesticated animal to immediately report the same to the Animal Services or Health Department.
4. Examination. In the event of any of the foregoing contingencies, the Law Enforcement Officers, the Health Officer, the Animal Control Officer or Conservation Officer shall cause the dog, cat or other domesticated animal so suspected of being infected with diseases communicable to human beings, or who has attacked, bitten or caused any skin abrasion upon any person, to be immediately examined.
5. Quarantine conditions. The Law Enforcement Officers, the Health Officer, the Conservation Officer or the Animal Control Officer shall thereupon make such examinations as in his/her judgment are necessary to determine whether or not such dog or cat or other domesticated animal is suffering from rabies or other communicable diseases transmissible to human beings, and shall place such dog, cat or other domesticated animal in quarantine and keep it under observation for such period as in his/her opinion may be necessary, but at least for a period of ten (10) days.
6. Quarantine place. Such dog or cat or other animal may be placed in quarantine at the owner's home providing the Law Enforcement Officer, the Health Officer, the Conservation Officer or the Animal Control Officer is satisfied that such animal can be kept, tied and isolated from all other animals and cannot come into contact with any person or persons. It is unlawful to permit such quarantined animal to be untied or to come into contact with persons or other animals. If, in the opinion of the Law Enforcement Officer, the Health Officer, the Conservation Officer or the Animal Control Officer, this is not possible, the dog, cat or other domesticated animal may be quarantined at the animal control facility at the expense of the owner.
7. Report of condition. It shall be the duty of the owner or agent, after a dog, cat or other domesticated animal is placed under quarantine, to report at once to the officer who has placed the animal under quarantine any noticeable change in the physical condition of such animal, and to notify him/her at once in the event that such animal should die.
8. Death of animal during quarantine. In the event of the death of an animal suspected by the officers of being rabid or suffering from disease, the owner, or his agent, of said animal shall leave the carcass, and shall turn over said animal to local and state health officials for the purpose of making such post mortem examinations or other examinations, including autopsy and disposal thereof which, in his/her opinion, are necessary to determine whether or not such animal has died of rabies or other diseases communicable to humans.
9. Payment of quarantine and examination costs.
   a. The owner of any animal quarantined may redeem such animal after any quarantine period upon the payment of all costs of confinement, including cost of food and the care of such animal. If the animal is a stray or the owner is unknown, the agency ordering the quarantine will be billed for all costs relative to the animal.
   b. When an animal dies during quarantine, the owner, if known, shall be billed for all costs of confinement to date of death, and for all examinations, including post mortem or laboratory tests for rabies.
   c. If the owner of an animal or any other person or organization specifically requests a post mortem or laboratory examination of an animal for rabies, then the person making such a request shall pay all costs incurred.

10. Periodic examination of animal. It shall be the duty of the Health Officer to make, in addition to the initial examination, at least one subsequent examination at the end of the ten (10)-day period, and such other examination as he/she may deem necessary. [TCR 08-56]

7-343 Civil liability of owner for damages caused by the owner's dog, cat or other domesticated animal. Every person owning or harboring a dog, cat or other domesticated animal shall be liable for all damages done by the dog, cat or other domesticated animal. [TCR 90-73, 08-56]

7-344 Sovereign immunity of the Tribe. There is no waiver of sovereign immunity of the Winnebago Tribe of Nebraska in the implementation of this law. [TCR 90-73, 08-56]

7-345 Penalties. For use in this Article, the penalties for violation are as follows:

1. Unless otherwise provided, the civil penalty for any person to do any act forbidden or to fail to perform any act required by any provision or section of this Animal Control Article is twenty-five dollars ($25.00) for the first violation, fifty dollars ($50.00) for the second violation and seventy-five dollars ($75.00) for any subsequent violations.
2. All civil penalties are to include court costs and, except for Sections 7-332 and 7-333, court appearances are waivable.
3. Court proceedings to enforce civil penalties herein are to be initiated by the issuance of a citation by a Law Enforcement Officer or Tribal Conservation Officer or by the filing of a civil complaint by the Tribal Prosecutor.
4. Penalties collected for violations of this Article, less court costs, shall be disbursed to the Office of Environmental Health for the purpose of defraying the costs of licensing, education, and other expenses related to Animal Control.
5. Failure to appear as directed by a citation or civil complaint or failure to otherwise fully satisfy the penalty assessed thereby shall be punishable pursuant to the Winnebago Criminal Code § 3-639.
6. Cost incurred by Tribal or Village authorities for the spaying or neutering of a dog or cat pursuant to Section 7-311(1) shall be assessed and payable as a penalty under this Section. [TCR 90-73, 08-56, 11-70]

TITLE 7
ARTICLE 4
OPEN BURNING

7-401 Definitions.
7-402 Open burning.
7-403 Prohibition on open burning.
7-404 Trash containers.
7-405 Penalty.

7-401 Definitions. For the purpose of this Article the following words shall have the following meanings unless otherwise required:

1. Person. Any individual, household, firm, partnership, corporation, company, society, association, and every officer, agent or employee thereof.
2. Open burning. Any burning from which the products of combustion are discharged directly into the open air without passing through a stack or chimney.

7-402 Open burning. Open burning is prohibited with the following exceptions:

1. Controlled burning of weeds;
2. Fires used for educational, recreational, cooking or religious purposes;
3. Small outdoor fires necessary for producing a source of heat;
4. Trash burning of household garbage in metal barrels except that insofar as possible such household garbage should be left unburned for regular garbage collection.
5. Burning of household garbage shall be permitted when done in a metal barrel with a capacity of fifty five gallons or more and only when covered with a metal screen of sufficient density to prevent unburned or burning particles from escaping from the barrel;
6. Such fires shall be attended at all times until completely extinguished.

7-403 Prohibition on open burning. Nothing contained herein shall prohibit appropriate Tribal officials from banning open burning during periods of extreme fire danger.

7-404 Trash containers. Trash containers shall be limited in capacity to the lesser of fifty five gallons or one hundred pounds and shall be secured at any opening and to the earth so as to prevent spillage and animal entrance.

7-405 Penalty. Any person who willfully or negligently violates this Article shall be subject to citation by the Winnebago Tribal Police or the Bureau of Indian Affairs police and shall, upon citation, be ordered to appear in Winnebago Tribal Court. A person found guilty of willful or negligent violation of this Article shall be subject to a fine of not more than one thousand dollars ($1,000.00). Additionally, the Winnebago Tribal Court may order restitution for any actual damages caused by such person's violation of this Article.

TITLE 7
ARTICLE 5
BURNING OF PETROLEUM PRODUCTS

7-501 Definitions.
7-502 Burning of petroleum products.
7-503 Penalty.

7-501 Definitions. For the purpose of this Article the following words shall have the following meanings unless otherwise required:

1. Person. Any individual, household, firm, partnership, corporations, company, society, association, and every officer, agent or employee thereof.
2. Petroleum products. Any product which is composed of petroleum, including but not limited to, motor oil, plastic, or rubber.

7-502 Burning of petroleum products. Any burning of petroleum products is prohibited, with the exception of burning in a Tribally-approved incinerator.

7-503 Penalty. Any person who willfully or negligently violates this Article shall be subject to citation by the Winnebago Tribal police or the Bureau of Indian Affairs police and shall, upon citation, be ordered to appear in Winnebago Tribal Court. A person found guilty of willful or negligent violation of this Article shall be subject to a fine of not more than one thousand dollars ($1,000.00). Additionally, the Winnebago Tribal Court may order restitution for any actual damages caused by such person's violation of this Article.

TITLE 7
ARTICLE 6
OPEN DUMPING

7-601 Definitions.
7-602 Open dumping.
7-603 Containment Dumping.
7-604 Penalty.

7-601 Definitions. For the purpose of this Article, the following words have the following meanings unless otherwise required:

1. Person. Any individual, household, firm, partnership, corporation, company, society, association, and every officer, agent or employee thereof.
2. Garbage. All solid wastes, including but not limited to, ashes, paper, wood, tin cans, yard clippings, glass, bedding, and the carcasses of animals.
3. Resident Tribal Member. An enrolled member of the Winnebago Tribe of Nebraska living within the exterior boundaries of the Winnebago Indian Reservation.
4. Open dumping. Disposing of garbage in any manner except:
   A. In trash containers as defined by Title 7 Article 4 of the Winnebago Tribal Code.
   B. Within a Tribally-approved landfill area pursuant to Tribal regulations for landfill dumping.
5. Containment Dumping. Disposing of garbage and waste materials inside of an approved and designated dumpster receptacle area. [TCR 17-12]

7-602 Open dumping. Open dumping is prohibited within the exterior boundaries of the Winnebago Indian Reservation.

7-603 Containment Dumping. Containment Dumping is only permitted for Resident Tribal Members. Any person who is not a Resident Tribal Member is prohibited from Containment Dumping, and any person found to be in violation of this section will be subject to the penalty set forth in Section 7-604. [TCR 17-12]

7-604 Penalty. Any person who willfully or negligently violates this Article shall be subject to citation by the Winnebago Tribal Police or the Bureau of Indian Affairs Police and shall, upon citation, be ordered to appear in Winnebago Tribal Court. A person found guilty of willful or negligent violation of this Article shall be subject to a penalty of not more than one thousand dollars ($1,000.00). Additionally, the Winnebago Tribal Court may order restitution for any actual damage caused by such person's violation of this Article. [TCR 17-12]

TITLE 7
ARTICLE 8
COMPULSORY EDUCATION
(As amended October 8, 2004)

7-801	Compulsory education; attendance required.	7-806	Non-attendance; duty to report; investigation.
7-802	Compulsory education; exceptions.	7-807	Excessive absenteeism; report.
7-803	Record of attendance; made where.	7-808	Diversion team; process.
7-804	Non-attendance lists; transmission of information.	7-809	Failure to comply with diversion process; continued violation; further action.
7-805	Entry or withdrawal of student; attendance reports.	7-810	School procedures.
		7-811	Effective date.

7-801 Compulsory education; attendance required. Every person residing in the area comprised by State of Nebraska School District 17 who has legal *guardianship* or actual charge or control of any child not less than seven nor more than *nineteen* years of age shall cause such child to attend regularly the public, private, denominational, or parochial day schools each day that such schools are open and in session, except when excused by school authorities, unless such child has been graduated from high school. [TCR 05-03]

7-802 Compulsory education; exceptions.

1. Section 7-801 shall not apply where a child has obtained a General Equivalency Diploma (GED) prior to the effective date of this Title 7, Article 8, or when illness or severe weather conditions make attendance impossible or impracticable.
2. In no case shall a child be allowed to enroll in a GED program prior to reaching the age of eighteen (18).
3. Should a child between the ages of eighteen and nineteen, seek to withdraw from regular school attendance for the purposes of enrolling in a GED program, an application for such purpose shall be made to the school superintendent.
4. The school superintendent shall forward all withdrawal applications to the Diversion Team for review and approval or denial.
5. Such child shall be required to attend a meeting with the Diversion Team, at which the Diversion Team shall assist the child in exploring all available educational options. The Diversion Team shall work with the child to develop a continuing education plan, which shall be monitored by the Diversion Team until such child completes his/her high school educational requirements or attains the age of nineteen.
6. Students who are enrolled in a GED program must provide documentation of enrollment and regular attendance to the school superintendent. Upon completion of GED requirements, a copy of the diploma shall be provided to the school superintendent. [TCR 05-03]

7-803 Record of attendance; made where. Each public, private, denominational and parochial school of State of Nebraska School District 17 shall keep a record showing (1) the name, age, and legal residence of each child enrolled; (2) the name of the parent or legal guardian; (3) the number and county of the school district in which said school is located; (4) the number of days each pupil was present and the number of days absent; and (5) the cause of each absence. On the third day on which the public, private, denominational and parochial schools are in session at the beginning of each school year, a list shall be sent to the superintendent of said schools including the names of the pupils enrolled in his/her

schools, with the age, grade and address of each. At St. Augustine's Elementary School, the list shall be sent to the principal of that school. [TCR 05-03]

7-804 Non-attendance lists; transmission of information. The superintendent of the Winnebago Public Schools, or his designee, upon receipt of the list specified in Section 7-803, shall (1) compare the names of the children enrolled with the last census report on file in his/her office from such district; (2) prepare a list of all children resident in such district under his jurisdiction who are not attending school as provided in Section 7-801; and (3) transmit the list to the principal or attendance officer of said district. The principal of St. Augustine's Elementary School, or his designee, shall perform the duties for the purposes of this **S**ection. [TCR 05-03]

7-805 Entry or withdrawal of student; attendance reports. Whenever any child shall enter or withdraw from the Winnebago Public Schools after the third day in which school is in session, the name of such child shall be transmitted to the principal or attendance officer of the Winnebago Public Schools, who shall use such information in whatever way he/she shall deem necessary for the purpose of enforcing Section 7- 801. The principal of St. Augustine's Elementary School, or his designee, shall perform the duties for the purposes of this **S**ection. [TCR 05-03]

7-806 Non-attendance; duty to report; investigation.

1. In the area comprised by State of Nebraska School District 17, the superintendent, or any principal, teacher, or member of the board of education of any school within said district who shall know of any violation of Section 7-801 on the part of any child of school age, his/her parents, the person in actual or legal control of such child, or any other person, shall within three days report such violation to the principal or attendance officer of Nebraska School District 17 and/or the principal of St. Augustine's Elementary School as the person making the report believes appropriate.
2. When of his/her personal knowledge, by report or by complaint as provided herein, the principal or attendance officer believes that any child is unlawfully absent from school, he/she shall immediately investigate and render all service in his/her power to compel such child to attend some public, private, denominational, or parochial school which the person having control of the child shall designate. [TCR 05-03]

7-807 Excessive absenteeism; report. At the end of each week during the school year, all absences of five or more days per semester shall be reported to the principal or attendance officer of the school. This report shall include (1) the name, age, and address of each child; (2) the number of days each child was absent; (3) the dates and cause of each absence; and (4) the parent or legal guardian's name. The principal of St. Augustine's Elementary School, or his designee, shall perform the duties for purposes of this **S**ection. A copy of this report shall also be forwarded to Child & Family Services, the Juvenile Probation Officer, and to the Tribal Prosecutor so that each department can conduct appropriate follow up, if necessary. [TCR 05-03]

7-808 Diversion team; process.

1. A "Diversion Team" shall be established by each school in the District to serve the purpose of assisting school officials in responding to violations of Section 7-801. The Diversion Team shall consist of an Intervention/Prevention Specialist, at least one school official and at least one representative from another juvenile services program in the District as deemed appropriate by the superintendent or by the principal in the case of St. Augustine's Elementary School.
2. Upon determination by the principal or attendance officer that a serious violation of Section 7-801 has occurred, a notice shall be sent to the Diversion Team, who shall then schedule a meeting

with the parent or legal guardian regarding said violation within three (3) school days or as soon as practicable. A serious violation is one in which a child has been absent five (5) or more days of school during one semester.

3. A written notice of said meeting with the Diversion Team shall be sent to the parent or legal guardian of the child.
4. A Diversion Contract shall be developed by and between the Diversion Team, the child and/or the parent or legal guardian.
5. The Diversion Contract should address all aspects such as the physical, emotional, mental and spiritual needs of the child and/or family as deemed appropriate by the team. The Division Team shall make every effort to provide referrals and coordinate efforts with other family support services and resources available to the family in order to ensure compliance with Section 7-801. The Diversion Team may utilize traditional peacemaking, truancy mediation, family group counseling, and/or other methods of appropriate intervention.
6. School officials shall develop procedures to effectively implement and coordinate the Diversion process. The school principal shall designate an Intervention/Prevention Specialist who will be responsible for monitoring Diversion Contracts. [TCR 05-03]

7-809 Failure to comply with diversion process; continued violation; further action.

1. Continued absenteeism, exceeding eight days or more in a semester or otherwise failing to comply with the Diversion process shall result in a mandatory meeting with the Diversion Team, which may include Court personnel.
2. The parent or legal guardian shall be notified of this meeting by written notice or through personal contact from the Diversion Team.
3. The Diversion Team shall make a determination regarding further action, which may include, but is not limited to, entering into a revised Diversion Contract, a referral to Child & Family Service, and/or a referral to the Tribal Prosecutor.
4. Upon referral to the Tribal Court, the prosecutor may file a complaint before the judge of the Tribal Court pursuant to Section 3-713.
5. A determination must be made by the prosecutor to file a complaint or deny the referral within five (5) days after receipt. The decision shall then be communicated by the prosecutor to the referring school official so additional action can be taken, if warranted.
6. If any person again violates the same section after a first notice of continued violation has been sent, no further written notice shall be required, but a complaint may be filed at once. [TCR 05-03]

7-810 School procedures. Nothing in this Code provision shall prevent any school in District 17 from enacting internal procedures, which shall further the intent of the Winnebago Tribe to enforce compulsory school attendance, so long as such procedures do not conflict with the provisions as set forth herein. [TCR 05-03]

7-811 Effective date. This Article 8 of Title 7 “Compulsory Education” shall become effective upon the date of enactment by the Tribal Council and shall remain in effect each year thereafter. [TCR 05-03]

TITLE 7
ARTICLE 9
FOOD CODE

7-901 Food Code.
7-902 Food safety, illness prevention and honest presentation.
7-903 Statement.
7-904 Statement of application and listing of terms.
7-905 Person in Charge.
7-906 Clean Condition.
7-907 Cleaning Procedure.
7-908 When to Wash.
7-909 Clean Condition.
7-910 Eating, Drinking, or Using Tobacco.
7-911 Discharge from the Eyes, Nose or Mouth.
7-912 Food.
7-913 Characteristics.
7-914 Nonfood-Contact Surfaces.
7-915 Equipment and Utensils.
7-916 Food-Contact Surfaces.
7-917 Nonfood-Contact Surfaces.
7-918 Approved System.
7-919 Outdoor Enclosure.
7-920 Receptacles.
7-921 Outside Receptacles.
7-922 Storing Refuse, Recyclables, and Returnables.
7-923 Areas, Enclosures, and Receptacles, Good Repair.
7-924 Surface Characteristics.
7-925 Handwashing Cleanser, Availability.
7-926 Mechanical.
7-927 Maintaining Premises, Unnecessary Items and Litter.
7-928 Prohibiting Animals.
7-929 Separation of poisonous or toxic materials.
7-930 Poisonous or toxic materials; Restriction.
7-931 Conditions of Use.
7-932 Rodent Bait Stations.
7-933 Public Health Protection.
7-934 Preventing Health Hazards, Provisions for Conditions Not Addressed.
7-935 Modifications and Waivers.
7-936 Prerequisite for Operation.
7-937 Form of Submission.
7-938 Qualifications and Responsibilities of Applicants.
7-939 Contents of Application.
7-940 Existing Establishments, Permit Renewal, and Change of Ownership.
7-941 Denial of Application for Permit, Notice.
7-942 Revocation.
7-943 Appeal.
7-944 Responsibilities of Permit Holder.

7-901 Food Code. These provisions shall be known as the Winnebago Tribe of Nebraska Food Code, hereinafter referred to as "this Code."

7-902 Food safety, illness prevention and honest presentation. The purpose of this Code is to safeguard public health and provide to consumers food that is safe, unadulterated, and honestly presented.

7-903 Statement. This Code establishes definitions; sets standards for management and personnel, food operations, and equipment and facilities; and provides for food establishment inspection, employee restriction, permitting, and suspension of privilege to sell food to the public.

7-904 Statement of application and listing of terms. The following definitions apply in the interpretation and application of this Code.

1. "Adulterated" has the meaning stated in the Federal Food, Drug, and Cosmetic Act, § 402.
2. "Approved" means acceptable to the regulatory authority based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.
3. "Beverage" means a liquid for drinking, including water.

4. "CFR" means Code of Federal Regulations. Citations in this Code to the CFR refer sequentially to the Title, Part, and Section numbers, such as 21 CFR 178.1010 refers to Title 21, Part 178, Section 1010.
5. "Code of Federal Regulations" means the compilation of the general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government which:
    a. Is published annually by the U.S. Government Printing Office; and
    b. Contains FDA rules in 21 CFR, USDA rules in 7 CFR and 9 CFR, EPA rules in 40 CFR, and Wildlife and Fisheries rules in 50 CFR.
6. "Consumer" means a person who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a food establishment or food processing plant, and does not offer the food for resale.
7. "Corrosion-resistant material" means a material that maintains acceptable surface cleanability characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and sanitizing solutions, and other conditions of the use environment.
8. "Critical item" means a provision of this Code, that, if in noncompliance, is more likely than other violations to contribute to food contamination, illness, or environmental health hazard.
9. "Critical limit" means the maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to minimize the risk that the identified food safety hazard may occur.
10. Drinking Water.
    a. "Drinking water" means water that meets 40 CFR 141 National Primary Drinking Water Regulations.
    b. "Drinking water" is traditionally known as "potable water."
11. "Dry storage area" means a room or area designated for the storage of packaged or containerized bulk food that is not potentially hazardous and dry goods such as single-service items.
12. Easily Cleanable.
    a. "Easily cleanable" means a characteristic of a surface that:
        i. Allows effective removal of soil by normal cleaning methods;
        ii. Is dependent on the material, design, construction, and installation of the surface; and varies, with the likelihood of the surface's role in introducing pathogenic or toxigenic agents or other contaminants into food based on the surface's approved placement, purpose, and use.
    b. "Easily cleanable" includes a tiered application of the criteria that qualify the surface as easily cleanable as specified under Subparagraph (a) of this definition to different situations in which varying degrees of cleanability are required such as:
        i. The appropriateness of stainless steel for a food preparation surface as opposed to the lack of need for stainless steel to be used for floors or for tables used for consumer dining; or
        ii. The need for a different degree of cleanability for a utilitarian attachment or accessory in the kitchen as opposed to a decorative attachment or accessory in the consumer dining area.
13. "Employee" means the permit holder, person in charge, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or other person working in a food establishment.
14. "EPA" means the U.S. Environmental Protection Agency.
15. Equipment.
    a. "Equipment" means an article that is used in the operation of a food establishment such as a freezer, grinder, hood, ice maker, meat block, mixer, oven, reach-in refrigerator, scale, sink, slicer, stove, table, temperature measuring device for ambient air, vending machine, or warewashing machine.

b. "Equipment" does not include items used for handling or storing large quantities of packaged foods that are received from a supplier in a cased or over-wrapped lot, such as hand trucks, forklifts, dollies, pallets, racks, and skids.

16. "Food" means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.
17. "Food-contact surface" means:
    a. A surface of equipment or a utensil with which food normally comes into contact; or
    b. A surface of equipment or a utensil from which food may drain, drip, or splash:
        i. Into a food; or
        ii. Onto a surface normally in contact with food.
18. "Food employee" means an individual working with unpackaged food, food equipment or utensils, or food contact surfaces.
19. "Food Establishment" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption. However, it does not include:
    a. An establishment that offers only prepackaged foods that are not potentially hazardous;
    b. A produce stand that only offers whole, uncut fresh fruits and vegetables.
20. "Hazard" means a biological, chemical, or physical property that may cause an unacceptable consumer health risk.
21. "Imminent health hazard" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on:
    a. The number of potential injuries; and
    b. The nature, severity, and duration of the anticipated injury.
22. "Kitchenware" means food preparation and storage utensils.
23. "Law" means applicable statutes, regulations, and ordinances.
24. "Linens" means fabric items such as cloth hampers, cloth napkins, table cloths, wiping cloths, and work garments including cloth gloves.
25. Packaged.
    a. "Packaged" means bottled, canned, cartoned, securely bagged, or securely wrapped, whether packaged in a food establishment or a food processing plant.
    b. "Packaged" does not include a wrapper, carry-out box, or other nondurable container used to containerize food with the purpose of facilitating food protection during service and receipt of the food by the consumer.
26. "Permit" means the document issued by the regulatory authority that authorizes a person to operate a food establishment.
27. "Person" means an association, a corporation, individual, partnership, other legal entity, government, or governmental subdivision or agency.
28. "Person in charge" means the individual present at a food establishment who is responsible for the operation at the time of inspection.
29. "Personal care items" means items or substances that may be poisonous, toxic, or a source of contamination and are used to maintain or enhance a person's health, hygiene, or appearance, including items such as medicines, first aid supplies, and other items such as cosmetics, and toiletries such as toothpaste and mouthwash.
30. "Physical facilities" means the structure and interior surfaces of a food establishment including accessories such as soap and towel dispensers and attachments such as light fixtures and heating or air conditioning system vents.
31. "Poisonous or toxic materials" means substances that are not intended for ingestion and are included in 4 categories:
    a. Cleaners and sanitizers, which include cleaning and sanitizing agents and agents such as caustics, acids, drying agents, polishes, and other chemicals;

b. Pesticides except sanitizers, which include substances such as insecticides and rodenticides;
c. Substances necessary for the operation and maintenance of the establishment such as nonfood grade lubricants and personal care items that may be deleterious to health; and
d. Substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, such as petroleum products and paints.

32. "Premises" means:
    a. The physical facility, its contents, and the contiguous land or property under the control of the permit holder; or
    b. The physical facility, its contents, and the land or property not described under Subparagraph (a) of this definition if its facilities and contents are under the control of the permit holder and may impact food establishment personnel, facilities, or operations, if a food establishment is only one component of a larger operation such as a health care facility, hotel, motel, school, recreational camp, or prison.
33. Ready-to-Eat Food.
    a. "Ready-to-eat food" means food that is in a form that is edible without washing, cooking, or additional preparation by the food establishment or the consumer and that is reasonably expected to be consumed in that form.
    b. "Ready-to-eat food" includes:
        i. Potentially hazardous food that is unpackaged and cooked to the temperature and time required for the specific food;
        ii. Raw, washed, cut fruits and vegetables;
        iii. Whole, raw, fruits and vegetables that are presented for consumption without the need for further washing, such as at a buffet; and
        iv. Other food presented for consumption for which further washing or cooking is not required and from which rinds, peels, husks, or shells are removed.
34. "Refuse" means solid waste not carried by water through the sewage system.
35. "Regulatory authority" means the Office of Environmental Health or an authorized representative having jurisdiction over the food establishment.
36. "Sanitization" means the application of cumulative heat or chemicals on cleaned food-contact surfaces that, when evaluated for efficacy, is sufficient to yield a reduction of 5 logs, which is equal to a 99.999% reduction, of representative disease microorganisms of public health importance.
37. "Single-service articles" means tableware, carry-out utensils, and other items such as bags, containers, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for one time, one person use.
38. "Single-Use Articles" means utensils and bulk food containers designed and constructed to be used once and discarded.
39. "Smooth" means a food-contact surface, floor, wall or ceiling having no roughness or projections making it difficult to clean.
40. "Support animal" means a trained animal such as a Seeing Eye dog that accompanies a person with a disability to assist in managing the disability and enables the person to perform functions that the person would otherwise be unable to perform.
41. "Tableware" means eating, drinking, and serving utensils for table use such as flatware including forks, knives, and spoons; hollowware including bowls, cups, serving dishes, and tumblers; and plates.
42. "Temporary food establishment" means a food establishment that operates for a period of no more than 14 consecutive days in conjunction with a single event or celebration.
43. "USDA" means the U.S. Department of Agriculture.
44. "Utensil" means a food-contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food, such as kitchenware or tableware that is multi-

use, single-service, or single-use; gloves used in contact with food, and food temperature measuring devices.

45. "Vending machine" means a self-service device that, upon insertion of a coin, paper currency, token, card, or key, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.

7-905 Person in Charge. The person in charge shall ensure that:

1. Employees and other persons such as delivery and maintenance persons and pesticide applicators entering the food preparation, food storage, and warewashing areas comply with this Code.
2. Employees are effectively cleaning their hands, by routinely monitoring the employees' handwashing.
3. Employees are visibly observing foods as they are received to determine that they are from approved sources, delivered at the required temperatures, protected from contamination, unadulterated, and accurately presented, by routinely monitoring the employees' observations and periodically evaluating foods upon their receipt.
4. Employees are properly cooking potentially hazardous food, being particularly careful in cooking those foods known to cause severe foodborne illness and death, such as eggs and comminuted meats, through daily oversight of the employees' routine monitoring of the cooking temperatures.
5. Employees are using proper methods to rapidly cool potentially hazardous foods that are not held hot or are not for consumption within 4 hours, through daily oversight of the employees' routine monitoring of food temperatures during cooling.
6. Employees are properly sanitizing cleaned multi-use equipment and utensils before they are reused, through routine monitoring of solution temperature and exposure time for hot water sanitizing, and chemical concentration, pH, temperature, and exposure time for chemical sanitizing.

7-906 Clean Condition. Food employees shall keep their hands and exposed portions of their arms clean.

7-907 Cleaning Procedure. Food employees shall clean their hands and exposed portions of their arms with a cleaning solution by vigorously rubbing together the surfaces of their lathered hands and arms for at least 20 seconds and thoroughly rinsing with clean water. Employees shall pay particular attention to the areas underneath the fingernails and between the fingers.

7-908 When to Wash. Food employees shall clean their hands and exposed portions of their arms immediately before engaging in food preparation including working with exposed food, clean equipment and utensils, and unwrapped single-service and single-use articles and:

1. After touching bare human body parts other than clean hands and clean, exposed portions of arms;
2. After using the toilet room;
3. After caring for or handling support animals or aquatic animals;
4. After coughing, sneezing, using a handkerchief or disposable tissue, using tobacco, eating, or drinking;
5. After handling soiled equipment or utensils;
6. During food preparation, as often as necessary to remove soil and contamination and to prevent cross-contamination when changing tasks;
7. When switching between working with raw food and working with ready-to-eat food; and
8. After engaging in other activities that contaminate the hands.

7-909 Clean Condition. Food employees shall wear clean outer clothing to prevent contamination of food, equipment, utensils, linens, and single-service and single-use articles.

7-910 Eating, Drinking, or Using Tobacco. Employees shall eat, drink, or use any form of tobacco only in designated areas where the contamination of exposed food; clean equipment, utensils, and linens; unwrapped single-service and single-use articles; or other items needing protection cannot result. A food employee may drink from a closed beverage container if the container is handled to prevent contamination of:

1. The employee's hands;
2. The container; and
3. Exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

7-911 Discharge from the Eyes, Nose, or Mouth. Food employees experiencing persistent sneezing, coughing, or a runny nose that causes discharges from the eyes, nose, or mouth may not work with exposed food; clean equipment, utensils, and linens; or unwrapped single-service or single-use articles.

7-912 Food. All food to be distributed to the public shall be safe, unadulterated, and truthfully presented.

7-913 Characteristics. Materials that are used in the construction of utensils and food-contact surfaces of equipment may not allow the migration of deleterious substances or impart colors, odors, or tastes to food and under normal use conditions shall be:

1. Safe;
2. Durable, corrosion-resistant, and nonabsorbent;
3. Sufficient in weight and thickness to withstand repeated warewashing;
4. Finished to have a smooth, easily cleanable surface; and
5. Resistant to pitting, chipping, grating, scratching, scoring, distortion, and decomposition.

7-914 Nonfood-Contact Surfaces. Nonfood-contact surfaces of equipment that are exposed to splash, spillage, or other food soiling or that require frequent cleaning shall be constructed of a corrosion-resistant, nonabsorbent, and smooth material.

7-915 Equipment and Utensils. Equipment and utensils shall be designed and constructed to be durable and to retain their characteristic qualities under normal use conditions.

7-916 Food-Contact Surfaces. Multi-use food-contact surfaces shall be:

1. Smooth;
2. Free of breaks, open scalus, cracks, chips, pits, and similar imperfections;
3. Free of sharp internal angles, corners, and crevices;
4. Finished to have smooth welds and joints; and
5. Accessible for cleaning and inspection by one of the following methods:
    a. Without being disassembled;
    b. By disassembling without the use of tools; or
    c. By easy disassembling with the use of handheld tools commonly available to maintenance and cleaning personnel such as screwdrivers, pliers, open-end wrenches, and Allen wrenches.

7-917 Nonfood-Contact Surfaces. Nonfood-contact surfaces shall be free of unnecessary ledges, projections, and crevices, and designed and constructed to allow easy cleaning and to facilitate maintenance.

7-918 Approved System. Drinking water shall be obtained from an approved source that is:

1. A public water system; or
2. A nonpublic water system that is constructed, maintained, and operated according to law.

7-919 Outdoor Enclosure. If used, an outdoor enclosure for refuse, recyclables, and returnables shall be constructed of durable and cleanable materials.

7-920 Receptacles. Receptacles and waste handling units for refuse, recyclables, and returnables and for use with materials containing food residue shall be durable, cleanable, insect- and rodent-resistant, leak-proof, and nonabsorbent. Plastic bags and wet strength paper bags may be used to line receptacles for storage inside the food establishment, or within closed outside receptacles.

7-921 Outside Receptacles. Receptacles and waste handling units for refuse, recyclables, and returnables used with materials containing food residue and used outside the food establishment shall be designed and constructed to have tight-fitting lids, doors, or covers. Receptacles and waste handling units for refuse and recyclables such as an on-site compactor shall be installed so that accumulation of debris and insect and rodent attraction and harborage are minimized and effective cleaning is facilitated around and, if the unit is not installed flush with the base pad, under the unit.

7-922 Storing Refuse, Recyclables, and Returnables. Refuse, recyclables, and returnables shall be stored in receptacles or waste handling units so that they are inaccessible to insects and rodents.

7-923 Areas, Enclosures, and Receptacles, Good Repair. Storage areas, enclosures, and receptacles for refuse, recyclables, and retumables shall be maintained in good repair.

7-924 Surface Characteristics. Except as specified in (B) of this section, materials for indoor floor, wall, and ceiling surfaces under conditions of normal use shall be:

1. Smooth, durable, and easily cleanable for areas where food establishment operations are conducted;
2. Closely woven and easily cleanable carpet for carpeted areas; and
3. Nonabsorbent for areas subject to moisture such as food preparation areas, walk-in refrigerators, warewashing areas, toilet rooms, mobile food establishment servicing areas, and areas subject to flushing or spray cleaning methods.

In a temporary food establishment:

1. If graded to drain, a floor may be concrete, machine-laid asphalt, or dirt or gravel if it is covered with mats, removable platforms, duckboards, or other suitable approved materials that are effectively treated to control dust and mud; and
2. Walls and ceilings may be constructed of a material that protects the interior from the weather and windblown dust and debris.

7-925 Handwashing Cleanser, Availability. Each handwashing lavatory or group of 2 adjacent lavatories shall be provided with a supply of hand cleaning liquid, powder, or bar soap.

7-926 Mechanical. If necessary to keep rooms free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke, and fumes, mechanical ventilation of sufficient capacity shall be provided.

7-927 Maintaining Premises, Unnecessary Items and Litter. The premises shall be free of:

1. Items that are unnecessary to the operation or maintenance of the establishment such as equipment that is nonfunctional or no longer used; and
2. Litter.

7-928 Prohibiting Animals.

1. Except as specified in (B) and (C) of this Section, live animals may not be allowed on the premises of a food establishment.
2. Live animals may be allowed in the following situations if the contamination of food, clean equipment, utensils, and linens; and unwrapped single-service and single-use articles cannot result.
3. Edible fish or decorative fish in aquariums, shellfish or crustacea on ice or under refrigeration, and shellfish and crustacea in display tank systems.
4. Patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas, and sentry dogs running loose in outside fenced areas.
5. In areas that are not used for food preparation such as dining and sales areas, support animals such as guide dogs that are trained to assist an employee or other person who is handicapped, are controlled by the handicapped employee or person, and are not allowed to be on seats or tables.

7-929 Separation of poisonous or toxic materials. Poisonous or toxic materials shall be stored so they cannot contaminate food, equipment, utensils, linens, and single-service and single-use articles by:

1. Separating the poisonous or toxic materials by spacing or partitioning and
2. Locating the poisonous or toxic materials in an area that is not above food, equipment, utensils, linens, and single-service or single-use articles. This paragraph does not apply to equipment and utensil cleaners and sanitizers that are stored in warewashing areas for availability and convenience if the materials are stored to prevent contamination of food, equipment, utensils, linens, and single-service and single-use articles.

7-930 Poisonous or toxic materials; Restriction.

1. Only those poisonous or toxic materials that are required for the operation and maintenance of a food establishment, such as for the cleaning and sanitizing of equipment and utensils and the control of insects and rodents, shall be allowed in a food establishment.
2. This Section does not apply to packaged poisonous or toxic materials that are for retail sale.

7-931 Conditions of Use. Poisonous or toxic materials shall be:

1. Used according to:
    a. Law and this Code;
    b. Manufacturer's use directions included in labeling, and, for a pesticide, manufacturer's label instructions that state that use is allowed in a food establishment;
    c. The conditions of certification, if certification is required, for use of the pest control materials; and
    d. Additional conditions that may be established by the regulatory authority; and

2. Applied so that:
   a. A hazard to employees or other persons is not constituted; and
   b. Contamination including toxic residues due to drip, drain, fog, splash or spray on food, equipment, utensils, linens, and single-service and single-use articles is prevented, and for a restricted-use pesticide, this is achieved by:
      i. Removing the items;
      ii. Covering the items with impermeable covers; or
      iii. Taking other appropriate preventive actions; and
      iv. Cleaning and sanitizing equipment and utensils after the application.
3. A restricted-use pesticide shall be applied only by an applicator certified as defined in 7 USC 136(e) Certified Applicator, of the Federal Insecticide, Fungicide and Rodenticide Act, or a person under the direct supervision of a certified applicator.

7-932 Rodent Bait Stations. Rodent bait shall be contained in a covered, tamper-resistant bait station.

7-933 Public Health Protection. The regulatory authority shall apply this Code to promote its underlying purpose of safeguarding public health and ensuring that food is safe, unadulterated, and honestly presented when offered to the consumer.

7-934 Preventing Health Hazards, Provision for Conditions Not Addressed.

1. If necessary to protect against public health hazards or nuisances, the regulatory authority may impose specific requirements in addition to the requirements contained in this Code that are authorized by law. Said requirements are incorporated into this Code, and shall have the same force and effect as though set forth herein.
2. The regulatory authority shall document the conditions that necessitate the imposition of additional requirements and the underlying public health rationale. The documentation shall be provided to the permit applicant or permit holder and a copy shall be maintained in the regulatory authority's file for the food establishment.

7-935 Modifications and Waivers. The regulatory authority may grant a variance by modifying or waiving the requirements of this Code if, in the opinion of the regulatory authority, a health hazard or nuisance will not result from the variance.

7-936 Prerequisite for Operation. No person may operate a food establishment without a valid permit to operate issued by the regulatory authority. If the regulatory authority is unable to issue a permit due to vacancy or otherwise, a person may operate a food establishment pending approval or disapproval of a permit.

7-937 Form of Submission. A person desiring to operate a food establishment shall submit to the regulatory authority a written application for permit on a form provided by the regulatory authority.

7-938 Qualifications and Responsibilities of Applicants. To qualify for a permit, an applicant shall:

1. Be an owner of the food establishment or an officer of the legal ownership;
2. Comply with the requirements of this Code;
3. Agree to allow access to the food establishment and to provide required information.

7-939 Contents of Application. The application shall include:

1. The name, birth date, mailing address, telephone number, and signature of the person applying for the permit and the name, mailing address, and location of the food establishment;
2. Information specifying whether the food establishment is owned by an association, corporation, individual, partnership, or other legal entity;
3. The name, title, address, and telephone number of the person directly responsible for the food establishment;
4. A statement signed by the applicant that:
    a. Attests to the accuracy of the information provided in the application; and
    b. Affirms that the applicant will:
        i. Comply with this Code; and
        ii. Allow the regulatory authority access to the establishment for purposes of inspecting the food handling operations to determine compliance with this Code.

7-940 Existing Establishments, Permit Renewal, and Change of Ownership. The regulatory authority shall renew a permit for an existing food establishment or may issue a permit to a new owner of an existing food establishment after a properly completed application is submitted, reviewed, and approved, and an inspection shows that the establishment is in compliance with this Code.

7-941 Denial of Application for Permit, Notice. If an application for a permit to operate is denied, the regulatory authority shall provide the applicant with a notice that includes:

1. The specific reasons and Code citations for the permit denial;
2. The actions, if any, that the applicant must take to qualify for a permit; and
3. Advisement of the applicant's right of appeal and the process and time frames for appeal that are provided in law.

7-942 Revocation. The regulatory authority may revoke any previously granted permit upon determination that one of the requirements for a permit is no longer met.

7-943 Appeal. Any denial of a permit to operate or a revocation of an existing permit may be appealed to the Winnebago Tribal Court System. Said appeal must be taken within 14 days of denial or revocation of said permit. The denial or revocation shall be upheld unless the Winnebago Tribal Court System finds that the decision of the regulatory authority was arbitrary or capricious.

7-944 Responsibilities of Permit Holder. Upon acceptance of the permit issued by the regulatory authority, the permit holder in order to retain the permit shall:

1. Abide by the provisions of this Code;
2. Immediately discontinue operations and notify the regulatory authority if an imminent health hazard may exist;
3. Allow representatives of the regulatory authority access to the food establishment at reasonable times for the sole purpose of inspection.

TITLE 7
ARTICLE 10
CORONER

7-1000 Appointment of coroner; qualifications; vacancies.
7-1001 Investigations and inquests.
7-1002 Expenses.
7-1003 Witnesses; fees.
7-1004 Oath of witnesses.
7-1005 Testimony; filing.
7-1006 Witness bound over; return.
7-1007 Burial.
7-1008 Bodies; effects; custody.
7-1009 Certificates of death.
7-1010 Expenses.
7-1011 Fingerprinting of unidentified deceased person.
7-1012 Coroner removal of pituitary gland during autopsy.

7-1000 Appointment of coroner; qualifications; vacancies.

1. Appointment by resolution. There is hereby established the position and office of coroner. The appointment of a coroner shall be made by the Winnebago Tribal Council for an indefinite period. The coroner serves at the pleasure of the Winnebago Tribal Council.
2. Educational requirements. A coroner must have successfully completed academic courses in pharmacology, surgery, pathology, toxicology, and physiology.
3. Vacancies. Vacancies in the office of coroner shall be filled by the Winnebago Tribal Council by motion. A coroner may be removed from office by motion of the Tribal Council.

7-1001 Investigations and inquests.

1. Deaths requiring inquests and investigations. The coroner shall investigate and may conduct inquests in all human deaths of the following types:
   a. Violent deaths, whether apparently homicidal, suicidal, or accidental, including but not limited to deaths due to thermal, chemical electrical or radiational;
   b. Deaths under unusual or mysterious circumstances;
   c. Deaths of persons whose bodies are to be cremated, dissected, buried at sea, or otherwise disposed of so that the bodies will later be unavailable for examination; and
   d. Deaths of inmates of public institutions who are not hospitalized for organic disease and whose deaths are not of any type referred to in clause (1) or (2).
2. Violent or mysterious deaths; autopsies. The coroner may conduct an autopsy in the case of any human death referred to in subdivision 1, clause (1) or (2), when the coroner judges that the public interest requires an autopsy.
3. Deaths caused by fire; autopsies. The coroner shall conduct an autopsy in the case of any human death reported to the coroner by a fire marshal or a chief officer of a fire department where the death is apparently caused by fire.
4. Other deaths; autopsies; exhumation; consent. The coroner may conduct an autopsy in the case of any human death referred to in subdivision 1, clause (3) or (4), or may exhume any human body and perform an autopsy on it in the case of any human death referred to in subdivision 1 when the coroner judges that the public interest requires an autopsy. No autopsy shall be conducted unless the surviving spouse, or next of kin if there is no surviving spouse, consents to it or the Tribal Court, upon notice as the Court directs, enters an order authorizing an autopsy or an exhumation and autopsy. Application for an order may be made by the coroner, by the Tribal Prosecutor or by the General Counsel, upon a showing that the Court deems appropriate.
5. Assistance of medical specialists. If during an investigation the coroner believes the assistance of pathologists, toxicologists, deputy coroners, laboratory technicians, or other medical experts is

necessary to determine the cause of death, the coroner shall obtain their assistance. Inquest. The record and report of the inquest proceedings may not be used in evidence in any civil action arising out of the death for which an inquest was ordered. Before an inquest is held, the coroner shall notify the county attorney to appear and examine witnesses at the inquest.

6. Records. The coroner shall keep properly indexed records giving the name, if known, of every person whose death is investigated, the place where the body was found, the date, cause, and manner of death, and all other relevant information concerning the death.
7. Reports. Deaths of the types described in this Section must be promptly reported for investigation to the coroner by the law enforcement officer, attending physician, mortician, person in charge of the public institutions referred to in (a), or other person with knowledge of the death.
8. For the purposes of this Section, health-related records or data on a decedent, except health data defined in Section 13.38, whose death is being investigated under this Section, whether the records or data are recorded or unrecorded, including but not limited to those concerning medical, surgical, psychiatric, psychological, or any other consultation, diagnosis, or treatment, including medical imaging, shall be made promptly available to the coroner, upon the coroner's written request, by a person having custody of, possession of, access to, or knowledge of the records or data. The coroner shall pay the reasonable costs of copies of records or data provided to the coroner under this Section. Data collected or created pursuant to this subdivision relating to any psychiatric, psychological, or mental health consultation with, diagnosis of, or treatment of the decedent whose death is being investigated shall remain confidential or protected nonpublic data, except that the coroner's report may contain a summary of such data.
9. Coroner in charge of body. Upon notification of a death subject to this Section, the coroner shall proceed to the body, take charge of it, and, when necessary, order that there be no interference with the body or the scene of death.
10. Criminal act report. On coming to believe that the death may have resulted from a criminal act, the coroner or deputy shall deliver a signed copy of the report of investigation or inquest to the Tribal prosecutor.
11. Sudden infant death. If a child under the age of two years dies suddenly and unexpectedly under circumstances indicating that the death may have been caused by sudden infant death syndrome, the coroner, medical examiner, or personal physician shall notify the child's parents or guardian that an autopsy is essential to establish the cause of death as sudden infant death syndrome. If an autopsy reveals that sudden infant death syndrome is the cause of death, that fact must be stated in the autopsy report. The parents or guardian of the child shall be promptly notified of the cause of death and of the availability of counseling services.
12. Autopsy fees. The coroner may charge a reasonable fee to a person requesting an autopsy if the autopsy would not otherwise be conducted under subdivision 1, 2, or 3.

7-1002 Expenses. The county board may allow the reasonable and necessary expenses of the coroner or deputies incurred for telephone tolls, telegrams, postage, the cost of transcribing the testimony taken at an inquest, and other expenses incurred solely for the officers' official business under this chapter.

7-1003 Witnesses; fees. The coroner may issue subpoenas for witnesses, returnable immediately or at a specified time and place. The persons served with the subpoenas shall be allowed the fees, the coroner shall enforce their attendance, and they shall be subject to the penalties provided by statute or the rules of criminal procedure.

7-1004 Oath of witnesses. The following oath shall be administered to the witnesses by the coroner: "Do you solemnly swear or affirm that the evidence you shall give to this inquest concerning the death of the person lying before you dead shall be the whole truth and nothing but the truth?"

7-1005 Testimony; filing. The testimony of a witness examined at an inquest must be put in writing by the coroner or under the coroner's direction and signed by the witness. The coroner shall then file the testimony, together with a record of all proceedings, in the office of the Court Administrator of the Tribal Court.

7-1006 Witness bound over; return. If the coroner finds that murder, manslaughter, or assault has been committed, the coroner shall so inform the Tribal prosecutor. The coroner shall return to the Tribal prosecutor the inquisition, written evidence, and all recognizances and examinations taken.

7-1007 Burial. When a coroner holds an inquest upon view of the dead body of any person unknown, or, being called for that purpose, does not think it necessary, on view of the body, that an inquest be held, the coroner shall have the body decently buried. All expenses of the inquisition and burial shall be paid by the Tribe.

7-1008 Bodies; effects; custody. A person may not remove, interfere with or handle the body or the effects of any person subject to an investigation by the coroner except upon order of the coroner, the Tribal prosecutor or the Tribal Court. The coroner takes charge of the effects found on the body of a deceased person and disposes of them as the Tribal Court directs by written order. If a crime in connection with the death of a deceased person is suspected, the coroner or medical examiner may prevent any person from entering the premises, rooms, or buildings, and shall have the custody of objects that the coroner deems material evidence in the case. A willful violation of this Section is a misdemeanor.

7-1009 Certificates of death. No person, other than the county coroner or judge exercising probate jurisdictions shall issue a certificate of death in cases of violent or mysterious deaths, including suspected homicides, occurring on the reservation.

7-1010 Expenses. The Tribe may allow the reasonable and necessary expenses of the coroner incurred for telephone tolls, telegrams, postage, the cost of transcribing the testimony taken at an inquest, and other expenses incurred solely for the officers' official business under this chapter.

7-1011 Fingerprinting of unidentified deceased person. Each coroner shall have fingerprinted all deceased persons on the reservation whose identity is not immediately established. Within 24 hours after the body is found, the coroner shall forward to the Tribal prosecutor the fingerprints, fingerprint records, and other identification data.

7-1012 Coroner removal of pituitary gland during autopsy. A county coroner who performs an autopsy under this article may remove the pituitary gland from the body and give it to the national pituitary agency, or any other agency or organization, for research if the following conditions have been met:

1. The removal would not alter a gift made to another;
2. The coroner or medical examiner has no knowledge of any objection to the removal by the decedent or other person having the right to control the disposition of the body; and
3. The coroner has followed generally accepted ethical guidelines and the removal would not violate the tenets of the deceased's religion.

TITLE 7
ARTICLE 11
WINNEBAGO DRUG-FREE WORK PLACE
(Revised June 13, 2012)

7-1101 Citation.
7-1102 Purpose.
7-1103 Definitions.
7-1104 Statement of policy on drugs.
7-1105 Statement of policy on alcohol.
7-1106 Zero tolerance policy.
7-1107 Education and training of employees.
7-1108 Drug and alcohol testing procedures; reasonable suspicion.
7-1109 Random drug and alcohol testing.
7-1110 Drug test results.
7-1111 Alcohol test results.
7-1112 Refusal to submit.
7-1113 Positive test results.
7-1114 Release of test results.
7-1115 Laboratory facility.
7-1116 Applicants; generally.
7-1117 Prohibited acts; penalties.
7-1118 Supervisor responsibility.
7-1119 Consent to jurisdiction.

7-1101 Citation. This article shall be known and may be cited as the "Drug-Free Workplace Act," and references in this article to "the Act" shall refer to this article unless another is clearly indicated. [TCR 96-56, 11-146]

7-1102 Purpose. The Winnebago Tribe of Nebraska is committed to maintaining a safe, healthful and productive work environment for all employees. To that end, the Winnebago Tribe will attempt to eliminate the abuse of alcohol, illegal drugs, prescription drugs, or any other substance which could impair an employee's ability to perform safely and effectively the functions of any given job. Drug and alcohol abuse of any nature by employees of the Winnebago Tribe of Nebraska cannot be tolerated. All employees of the Winnebago Tribe are covered by this statute, regardless of the physical location of the work place. The purpose of this Act is as follows:

1. To establish and maintain a safe and healthy working environment for all employees;
2. To ensure the reputation of the Winnebago Tribe of Nebraska employees as good, responsible employees worthy of public trust;
3. To reduce the incidents of accidental injury to persons or property;
4. To reduce absenteeism, tardiness, and indifferent job performance; and
5. To provide assistance toward rehabilitation for any employee who seeks the Tribe's help in overcoming any addiction to, dependence upon, or problem with alcohol or drugs. [TCR 96-56, 11-146]

7-1103 Definitions. For purposes of the Act, unless the context otherwise requires:

1. "Alcohol" shall mean any product of distillation of any fermented liquid, whether rectified or diluted, whatever the origin thereof, syntheticethyl alcohol, spirits, wine and beer, every liquid or solid, patented or not, containing alcohol, spirits, wine or beer, and alcohol used in the manufacture of denatured alcohol, flavoring extracts, syrups, or medicinal, mechanical, scientific, culinary and toilet preparations.
2. "Alcohol or drug abuse." For the purposes of this Act, alcohol and drug abuse shall be defined as an employee's dependence or addiction of sufficient severity to have the effect of impairing the performance of his/her official duties or his/her job behavior.
3. "Applicant" shall mean any person who has applied for employment with an employer as defined in subsection (12) but who is not an employee.

4. "Breath-testing device" shall mean an Intoxilizer model 5000 or other scientific testing equivalent as approved by and operated in accordance with the Department rules and regulations.
5. "Breath-testing device operator" shall mean a person who has obtained or been issued a permit pursuant to the Department rules and regulations.
6. "Department" shall mean the Nebraska or Iowa Department of Health.
7. "Department rules and regulations" shall mean the techniques and methods authorized by the Nebraska or Iowa Department of Health.
8. "Drug" shall mean any substance, chemical, compound as described, defined or delineated in the Winnebago Criminal Code, Title III, Section 3-745, incorporating 21 U.S.C. 812, or any metabolite or conjugated form thereof, except that any substance, chemical or compound containing any product as defined in subsection (1) of this Section may also be defined as alcohol. Notwithstanding any provisions of this Act, peyote, or any non-synthetic derivative thereof, shall not be defined as an illegal drug if its use is in accordance with the practices of the Native American Church, or in such cases where the possession, use, or transfer is strictly in accordance with bona fide religious or medicinal purposes of locally recognized members.
9. "Drug test" or "Drug testing" shall mean any breath, blood, urine, saliva, chemical, skin tissue or related test conducted for the purpose of detecting the presence of drugs or alcohol, or a substance which inhibits the detection of such drugs or alcohol in an individual.
10. "Employee" shall mean any person who received any wage, commission, bonus or other form of compensation in return for such person's actions which are intended to directly or indirectly benefit an employer.
11. "Employee Assistance Program" (EAP) is defined as the program provided by the Winnebago Tribe for the benefit of its employees. In addition, the services of designated mental health professionals are provided to those employees for their assistance with any drug or alcohol problem.
12. "Employer" shall mean the Winnebago Tribe and its organization, business and governmental subdivisions, any governmental entities and any person, association or entity contracting to do business with the Winnebago Tribe within the exterior boundaries of the reservation of the Winnebago Tribe of Nebraska.
13. "Impaired" shall mean the inability of an employee to perform his/her usual and normal work assignments with normal effectiveness and efficiency.
14. "Reasonable suspicion" shall mean a belief based on objective facts sufficient to lead a reasonable, prudent person to suspect that an employee is under the influence of a substance so that the employee's ability to perform the functions of the job is impaired or so that the employee's ability to perform his/her job safely is reduced. Reasonable suspicion may result from actual observation of the use or ingestion of a substance by an employee. It may be based on reliable information that the employee is currently or has recently used or possessed a controlled substance or open container with alcohol on the job. Reasonable suspicion may result from an observation of physical symptoms, such as slurred speech, red watery eyes, unsteady gait, dilated pupils, drowsiness, or actual sleeping on the job. In addition, reasonable suspicion may result from the observation of behavioral symptoms, such as severe mood swings, unexplained personality changes, inattention to personal hygiene and frequent accidents.
15. "Reservation" shall mean all the territory with the exterior boundaries of the Winnebago Indian Reservation (including Flower's Island and other Tribal land located east of the Missouri River) as set forth in the Winnebago Treaty of March 8, 1865 (14 Stat. 671) and the twenty sections included in the strip purchased in Nebraska for the Wisconsin Winnebago (18 Stat. 170), June 22, 1874 and such lands as may be added thereto by Congress or the Tribe or reaffirmation of the title of lands through the Courts to the Tribe, except as otherwise provided by law. This definition of reservation includes all rights-of-way, waterways, streams, lakes, highways, railroad rights-of-way, mineral rights, etc. [TCR 96-56, 11-146]

7-1104 Statement of policy on drugs.

1. Abuse of drugs by Tribal employees will not be tolerated. Employees of the Winnebago Tribe of Nebraska shall not:
   a. Report to work impaired by any drug;
   b. Whether or not on or off duty, illegally use, manufacture, possess, sell, or provide to another any drug.
   c. Misuse or abuse of medically prescribed drugs during working hours on worksite premises or offsite while on official business.
2. Notwithstanding Section 7-1104(1)(c), use or possession of medically prescribed drugs or medications that have been legally prescribed to the employee by a person licensed to do so or use of peyote for medicinal or religious purposes are not violations of this Act. However, no prescription medication of any sort shall be brought upon Tribal property by any person other than the person for whom the medication is prescribed and shall be used only in the manner, combination and quantity prescribed.
3. A Tribal employee who is taking any medication, whether prescribed or non-prescribed, which may interfere with the safe and effective performance of duties or operation of Tribal equipment is required to advise his/her supervisor of the fact before beginning work. In the event that there is a question regarding an employee's ability to safely and effectively perform assigned duties while using such medication, clearance from a physician shall be required. Failure to advise a supervisor of the use of any medication which may interfere with the safe and effective performance of duties or operation of Tribal equipment may result in discipline.
4. Any employee who is convicted of a violation of any criminal drug or alcohol statute shall notify the Tribe of the conviction within five calendar days of the conviction. The employee shall enter and participate in a rehabilitation program through the Employee Assistance Program. [TCR 96-56, 11-146]

7-1105 Statement of policy on alcohol.

1. Abuse of alcohol by Tribal employees will not be tolerated. Employees of the Winnebago Tribe of Nebraska shall not:
   a. Report to work impaired by the use of alcohol;
   b. While on duty, use, possess, sell, or provide alcohol to another; and
   c. While on call, use, possess, sell, or provide alcohol to another.

   Failure to report such usage, possession, sale or provision of alcohol in the workplace shall result in termination.
2. In certain situations, employees are individually placed "on call." For these employees, "on call" shall mean those situations where an employee has been specifically and personally notified that he/she is on stand-by for a specific period of time and subject to being called in for Tribal work on an emergency basis. Such notification must occur either at the end of an employee's work shift before the employee leaves work or eight hours before any call-in would occur.
3. For the purposes of this Act, an employee whose blood, breath, or urine, when tested contains any alcohol concentration, is presumptively deemed impaired by the use of alcohol, unless the employee has properly reported use of medication pursuant to Section 7-1104(3). [TCR 96-56, 11-146]

7-1106 Zero tolerance policy. Abuse of alcohol and drugs by Tribal employees who provide direct services to clientele, including youth and adults, on a regular basis shall not be tolerated and is subject to immediate termination.

7-1107 Education and training of employees.

1. The Winnebago Tribe will develop and implement a Drug-Free Awareness Program to inform its employees of:
   a. The dangers of drug/alcohol abuse in the workplace;
   b. The Tribe's policy regarding drug and alcohol use;
   c. The availability of counseling, rehabilitation, etc., through the Tribe's Employee Assistance Program; and
   d. The penalties that may be imposed upon employees for substance abuse violations.
2. In addition, educational activities focusing on stress, substance abuse, and other problem areas may also be provided. These activities are designed to promote early identification and self-referral, prevent problems from developing and/or becoming more severe, and enhance the quality of life.
3. Employees are encouraged to utilize the programs provided by the Tribe in seeking assistance with drug/alcohol problems. Employees' use of these services privately and on their own initiative will not jeopardize job security, promotional opportunity, and/or reputation. When such use is private and voluntary, no report of any kind will be made by the Employee Assistance Program to the Tribe unless the employee freely and willingly chooses.
4. The Tribe will develop and implement a program of training to assist supervisory personnel in the recognition of conduct and behavior that gives rise to suspicion that an employee may be a drug/alcohol abuser. The intent of this training is not to put the supervisor in a position to diagnose alcohol/drug problems, but simply to make such supervisor sufficiently aware of the causes and symptoms so that he/she may seek proper referral. Such a training program shall also inform the supervisor of the Tribe's Employee Assistance Program and policies, as well as encourage the supervisor to seek proper consultation with the Employee Assistance Program when attempting to deal with an employee's deteriorating job performance. [TCR 96-56, 11-146]

7-1108 Drug and alcohol testing procedures; reasonable suspicion.

1. Any time a supervisor has reasonable suspicion to believe that an on-duty employee is impaired by alcohol or drugs, he/she shall immediately place such employee on special assignment in order to protect the employee, fellow employees, and the public from harm. The supervisor shall immediately notify his/her supervisor of such action.
2. The two supervisors will interview the employee. If both supervisors believe, based upon a reasonable suspicion, that the employee is impaired by the use of alcohol or drugs, then said employee will be ordered, pursuant to this Act, to submit to a test of his/her blood, breath or urine.
3. In determining whether or not the employee is impaired, the supervisors may consult with their supervisor, and if not available, the personnel director, and utilize any reasonable means or procedures available to confirm or disprove such suspicion, such as a breath alcohol pre-test, sobriety tests, and/or an examination to determine comprehension and motor skills.
4. A supervisor shall transport the employee to that facility designated by the Tribe for the performance of drug or alcohol tests. As soon as practicably possible, each supervisor shall document, in writing, to the Department head the reasons and causes which gave rise to the reasonable suspicion. Additionally, this documentation shall include a narrative of what steps were taken by the supervisor(s).
5. Before a drug or alcohol test is administered, employees will be ordered to sign a consent form authorizing the test and permitting the release of test results to a designated Employee Assistance Program official(s). The consent form shall provide space for employees and applicants to acknowledge that they have been notified of the Tribe's Drug-Free Workplace Act. The consent form for drug and alcohol tests shall also set forth the following information:

a. The procedure for confirming an initial positive test result.
b. The consequences of a confirmed positive test result.
c. The consequences of refusing to undergo a drug test.

7-1109 Random drug and alcohol testing.

1. In addition to testing based upon reasonable suspicion and for pre-employment purposes, random testing may be conducted and any such testing will be conducted pursuant this Article. The Personnel Department of the Winnebago Tribe of Nebraska shall be authorized to promulgate written policies and procedures regarding random drug testing, which policy shall be subject to approval of the Tribal Council and may be amended from time to time with the approval of the Tribal Council.
2. Any employee providing services which require transporting people or operating equipment on a regular basis shall be required as a condition of that employment to participate in random testing at intervals more frequent than the general work force.
3. Any department that provides direct services to clientele, including youth and adults, shall require random drug and alcohol testing for its employees at intervals more frequent than the general workforce. Such random drug and alcohol testing shall occur at least two (2) times per quarter for those employees who provide direct services to clientele, including youth and adults. [TCR 96-56, 11-146]

7-1110 Drug test results.

1. All drug testing shall be of the employee's urine. The initial drug screening shall be the Enzyme Immunoassay Techniques (EIT) test which shall be administered at Tribal expense. An employee or job applicant whose drug test indicates the presence of a drug group shall be given a second test, at Tribal expense, using Gas Chromatography/Mass Spectrometry (GC/MS).
2. If the GC/MS test confirms the drug group presence, both tests will be reviewed by a properly licensed and trained medical doctor. The purpose of this review is to see if the drug presence can be explained by the individual employee's medical history. In completing this review, the physician shall interview the employee and may perform a physical examination on such employee. Refusal to cooperate in such an interview or to consent to such physical examination shall be grounds for disciplinary action up to and including termination.
3. If the medical review confirms the presence of drugs in the employee's body fluids, then such test shall be considered positive. The employee or applicant shall be notified in writing in a sealed envelope marked "confidential" of the test results by the appropriate Department head or designee. The letter of notification shall identify the particular substance found.
4. An employee who tests positive for drugs may, at the employee's own expense, have a third test conducted on the same sample at a laboratory pre-approved by the Tribe which meets the minimum criteria for drug testing. If the test is for alcohol, and the Tribe orders a breath test, the employee has the right to another test at his/her own expense. The test may be of blood or breath.
5. An employee whose initial drug screening indicates the presence of a drug group may be suspended from his/her position without pay pending the results and confirmation of subsequent testing as provided in this section. If the result of the subsequent testing is confirmed negative, the employee shall be reinstated with pay retroactive to the first date of suspension.
6. Except for breath test specimens, all specimens which result in the finding of drugs or alcohol shall be refrigerated and preserved in a sufficient quantity for re-testing for a period of at least one hundred eighty (180) days.
7. Except for breath test specimens, a written record of the chain of custody shall be maintained from the time of the collection of the specimen until the specimen is no longer required. [TCR 96-56, 11-146, 12-92]

7-1111 Alcohol test results.

1. A positive finding of alcohol by preliminary screening procedures shall be subsequently confirmed by either:
   a. Gas Chromatography with a flame ionization detector or other scientific testing technique which has been approved by the Winnebago Tribe; or
   b. Breath testing device operated by a breath testing device operator.
   c. An employee who tests positive for alcohol has the right to another test at the employee's expense. The test may be of blood or breath. [TCR 96-56, 11-146]

7-1112 Refusal to submit. If an employee attempts to delay or evade by any means or otherwise refuses to consent to drug or alcohol testing, such refusal will be grounds for termination. The supervisor shall make every reasonable effort to ensure that such employee does not operate a motor vehicle by providing transportation for the employee to his/her home. Should the employee refuse to cooperate and attempt to operate a motor vehicle, the police shall be immediately notified. [TCR 96-56, 11-146]

7-1113 Positive test results. Pursuant to Section 7-1108, an employee who tests positive for drugs or who is determined, based upon test or circumstances to be impaired by alcohol, or pursuant to Section 7-1104(4), is convicted of a violation of any criminal drug or alcohol statute will be subject to the following disciplinary actions:

1. In instances where the employee has endangered the health, safety or well-being of themselves, fellow employees or citizens, the employee will be terminated.
2. In instances where this is the employee's first offense, except for as provided in Section 7-1113(5) below, the employee will be placed on performance probation and referred to the Employee Assistance Program. This shall be a management referral and as such, the employee shall be required to execute the proper medical releases so that the Employee Assistance Program may communicate to the Tribe whether such employee is in conformance with directed treatment. Such employees shall be required, in order to maintain their employment with the Tribe, to submit to random testing at intervals more frequent than the general work force to test for the consumption of alcohol or drugs for a period of time not to exceed two years. Any employee who tests positive for drugs or is shown to be impaired by alcohol pursuant to this random test, shall be terminated. Failure by an employee to comply with the Employee Assistance Program's directed treatment will result in termination.
3. In instances where the employee is already on performance probation, the employee will be terminated.
4. In instances where the employee tests positive for drugs or is determined to be impaired by alcohol and is the employee's second offense, the employee will be terminated.
5. In instances where the employee provides direct services to clientele, including youth and adults, on a regular basis, the employee will be terminated. [TCR 96-56, 11-146]

7-1114 Release of test results. At all stages of the drug/alcohol testing process, the employee's right to confidentiality will be respected and maintained as much as reasonably possible. Only those persons with a need to know are to be informed of the test results. Disclosure of test results to any other person, agency or organization is prohibited unless written authorization is obtained from the employee. All records relating to the taking of a drug or alcohol test, or the order to take a drug or alcohol test, shall be deemed confidential unless written authorization has been obtained freely and willingly from the employee, or the records become the subject of a personnel hearing or judicial proceeding. All records relating to the taking or ordering of a drug or alcohol test shall be kept in a separate file. Each Department head shall implement procedures to prevent the unauthorized distribution of the results of an order to take such a test. [TCR 96-56, 11-146]

7-1115 Laboratory facility.

1. The facility designated by the Tribe to administer drug/alcohol tests will be licensed pursuant to the Federal Clinical Laboratories Improvement Act of 1967, 42 United States Code, 263a, or be accredited by the College of American Pathologists. The above does not apply for breath tests. Any breath testing device shall conform to the rules and regulations of the Winnebago Traffic Code.
2. The facility designated by the Tribe shall use strict chain of custody procedures which ensure proper identification, labeling and handling of test samples. Such samples, except for breath test specimens, which result in a finding of drugs or alcohol, shall be refrigerated and preserved in a sufficient quantity for re-testing. Further, such facility shall in all respects, comply with all applicable state and federal statutes, rules and regulations. [TCR 96-56, 11-146]

7-1116 Applicants; generally.

1. Any applicant, including temporary hires and minor applicants, for any Tribal job shall be required as a part of his/her pre-employment examination to undergo drug testing pursuant to this Article. A consent form authorizing such tests shall be obtained from the minor's parent(s) or legal guardian prior to the test. Except as provided in Section 7-1117, any applicant, including temporary hires and minor applicants, who refuse to undergo such testing or tests positive for drugs or alcohol, shall have his/her hiring process terminated. Such person will not be allowed to re-apply for any Tribal position for a period of one year, unless the individual can prove he/she has successfully completed a rehabilitation program.
2. Applicants who were employed by the Tribe within the last calendar year and who were terminated from their employment as a result of a violation of the "Drug Free Work Place Act," *Section 7-1112 Positive test results*, shall, if hired, be required to submit to random testing at intervals more frequent than the general work force to test for the consumption of alcohol and drugs for a time not to exceed two (2) years. [TCR 96-56, 05-34, 11-146]

7-1117 Prohibited acts; penalties.

1. It shall be unlawful to provide, acquire or use body fluids or breath samples for the purpose of altering results of any drug test. Any applicant or employee who violates this Section may be subject to the same disciplinary sanctions as if the applicant or employee had refused the directives of the employer to provide a body fluid or breath sample.
2. No person shall tamper with or aid or assist another in tampering with body fluids or breath samples at any time before, during or after the collection or analysis of such fluids or samples for the purpose of altering the results of any test to determine the presence of drugs or alcohol. Any applicant or employee who violates this Section will be subject to termination. [TCR 96-56, 11-146]

7-1118 Supervisor responsibility. Supervisors are responsible for consistent enforcement of this Act. Any supervisor who knowingly permits a violation of this Act shall be subject to disciplinary action. Any non-supervisory employee who believes that any other Tribal employee, supervisor or non-supervisor is in violation of this Act may report that belief by contacting the personnel director. [TCR 96-56, 11-146]

7-1119 Consent to jurisdiction. Any governmental entity, person, association or entity who enters into any contract or agreement with the Winnebago Tribe of Nebraska, including the person's or entity's agents, employees, subcontractors or independent contractors, consents and shall be deemed to consent to the civil jurisdiction of the Winnebago Tribe of Nebraska and the Winnebago Tribal Court. [TCR 96-56, 11-146]

TITLE 7
ARTICLE 12
WORKER'S COMPENSATION CODE

7-1201	Purpose.
7-1202	Effective Date.
7-1203	Scope and Exclusive Remedy.
7-1204	Sovereign Immunity.
7-1205	Acknowledgment of Program and Notice to Covered Employees.
7-1206	Definitions.
7-1207	Notice of Injury to Employer & Filing of Claim with Administrator.
7-1208	Administrator.
7-1209	Time Limit for Filing of Claim.
7-1210	Medical Treatment of Covered Employee.
7-1211	Independent Medical Examination.
7-1212	Effect of Refusal or Obstruction of Examination or Treatment.
7-1213	Access to Medical Records and Medical Reports.
7-1214	Aggravation of Pre-existing Injury.
7-1215	Disclosure of Pre-existing Disabilities.
7-1216	False Statement or Representation in Employment Application.
7-1217	Benefits Mistakenly Awarded by Administrator.
7-1218	Benefits Mistakenly Awarded by the Worker's Compensation Appeals Committee.
7-1219	Benefits Induced by Proven Fraud.
7-1220	Right to Occupational Injury Benefits.
7-1221	Employer's Liability to Medical, Surgical and Hospital Services.
7-1222	Selection of Treating Physician by Administrator.
7-1223	Return to Work Form.
7-1224	Waiver by Covered Employee Invalid.
7-1225	Other Benefits Not Factors.
7-1226	Defenses to Liability Denied.
7-1227	Average Weekly Wage.
7-1228	Maximum and Minimum Weekly Benefits.
7-1229	Compensation; Schedule; Total Partial, and Temporary Disability; Injury to Specific Parts of the Body; Amounts and Duration of Payments.
7-1230	Exclusions from Coverage.
7-1231	Waiting Period for Benefits.
7-1232	Injuries Causing Death.
7-1233	Computation of Payments of Death Benefits.
7-1234	Death Benefit Compensation Schedule.
7-1235	Death of Covered Employee Ends Disability Payments.
7-1236	Burial Expenses.
7-1237	Waiting Time Penalty.
7-1238	Worker's Compensation Appeals Committee.
7-1239	Procedures for Disputed Claims.
7-1240	Hearing Request Procedures.
7-1241	Experts.
7-1242	Liability of Third Person to Injured Covered Employee; Subrogation Powers.
7-1243	Third Party Claim Procedures and Notice.
7-1244	Third Party Claims & Attorney Fees.
7-1245	Third Party Claims; Settlement Requirements.
7-1246	Awards.

7-1201 Purpose.

1. The Winnebago Tribe of Nebraska, hereinafter the "Tribe," exercising its inherent sovereign authority, adopts this Worker's Compensation Code, establishing a formal process for the administration of a Worker's Compensation program for the Tribe in a manner that is fair to both Covered Employees and the Employers of the Tribe. This Code shall be construed to promote the following purposes:

a. To provide medical treatment for injured Workers and fair income Benefits to injured Workers and their Dependents;
b. To provide an administrative system for the delivery of medical and financial Benefits to injured Workers;
c. To create a process whereby disputes over Compensation can be resolved in a fair and unbiased manner; and
d. To restore the injured Worker physically and economically to a self-sufficient status in an expeditious manner and to the greatest extent practicable. [TCR 08-27, 08-100]

7-1202 Effective Date.

1. This Article shall supersede and replace all current policies, practices, customs and procedures relating to Compensation for any work-related Injury suffered by a Tribal Covered Employee. This Code shall become effective thirty days from the date it is passed by the Winnebago Tribal Council and shall apply to all pending claims for work injuries defined by this Code. [TCR 08-27, 08-100]

7-1203 Scope and Exclusive Remedy.

1. This Code applies to all Covered Employees and Employers of the Tribe.
2. This Code shall be the exclusive method of Compensation and the exclusive remedy for injuries sustained by Covered Employees arising out of and in the course of his or her employment with the Tribe or an Employer of the Tribe.
   a. A Covered Employee or the Covered Employee's Dependents or legal representative, who accepts occupational Injury Benefits, waives the right to exercise any other legal remedy.
   b. A Covered Employee or the Covered Employee's Dependents or legal representative, who exercises any other legal remedy against the Tribe or an Employer, agent, or official of the Winnebago Tribe of Nebraska, waives any right to occupational Injury Benefits.
   c. Notwithstanding anything in this Section, an Employer that operates commercial enterprises off the Winnebago Reservation may elect to participate in a state worker's compensation program and opt out of the worker's compensation system established by this Code; such decision to participate in a state worker's compensation program shall be made by the Board of Directors or other governing body of the Employer.
3. The liability of the Tribe and Employers for all injuries arising out of and in the Course of Employment is limited to the Compensation provided to injured Covered Employees and/or Dependents pursuant to this Code or other statutory scheme should an Employer voluntarily elect to participate in a state worker's compensation program pursuant to Section 7-1203(2)(c) above, but only to the extent of the policy limits of insurance obtained by the Tribe or Employer for such purpose.
4. Such liability shall not be expanded except by amendment of this Code by official action of the Tribal Council. [TCR 08-27, 08-100]

7-1204 Sovereign Immunity.

1. Nothing in this Code shall be deemed or construed as a waiver of the Tribe's sovereign immunity from suit. The Tribe does not by enacting this Code consent to the jurisdiction of the State of Nebraska or State of Iowa's Worker's Compensation system, nor the jurisdiction of any state or federal court or administrative agency. Nor does this Code provide for judicial review by the Winnebago Tribal Court. [TCR 08-27, 08-100]

7-1205 Acknowledgment of Program and Notice to Covered Employees.

1. All Covered Employees, Workers and persons asserting a claim shall be conclusively presumed to have elected to take occupational Injury Benefits in accordance with the tenets, conditions and provisions of this program (including the schedule of Benefits) by virtue of employment with the Winnebago Tribe of Nebraska or an Employer of the Winnebago Tribe of Nebraska, exclusive of any other claims the Covered Employee may have with regards to the Injury.
2. All Covered Employees and/or persons asserting a claim for occupational Injury Benefits acknowledge that the Winnebago Tribe of Nebraska is, in fact, a federally-recognized Indian tribe and for the purposes of occupational Injury Benefits, is exercising its inherent sovereign authority. This Tribal Worker's Compensation Code applies regardless of location of Injury.
3. The Winnebago Tribe of Nebraska shall be responsible for posting a notice of this program in a conspicuous location
4. A copy of this Code will be made available to the Covered Employee or the Covered Employee's representative upon request. [TCR 08-27, 08-100]

7-1206 Definitions. In this program, unless the context otherwise requires:

1. "Administrator" means the insurance company providing coverage or its designee, including any third party administrator.
2. "Adoption" means persons adopted by decree of a recognized court of law.
3. "Average Weekly Wage" means the wage referred to in Section 7-1227.
4. "Benefit" means the findings or decision of the Administrator or designee regarding the amount of medical and lost time Benefits due to an injured Covered Employee or the Dependent of a deceased Covered Employee under the rules of the Tribal Occupational Injury Coverage Form.
5. "Child" or "Children" means the Child or Children of a Covered Employee, who are under the age of eighteen (18), including an unborn Child, a Child legally adopted prior to the Injury, a Child toward whom the Covered Employee stands in *loco parentis* (having taken on the responsibilities of a parent for someone else's Child); an illegitimate Child, and a stepchild, if such stepchild was, at the time of the Injury, a member of the Covered Employee's family and substantially dependent upon the Covered Employee for support. A Child does not include any married Children unless they are Dependents.
6. "Claimant" means the injured Covered Employee, or in the event of death of the Covered Employee, Dependents of the deceased.
7. "Course of Employment" means the employment of the Covered Employee at the time the Injury occurred. An Injury or Occupational Disease must arise out of and be in the course of their employment with the Winnebago Tribe or a Tribal Employer in order for a claim to be payable.
8. "Compensation" means lost time wages while disabled or unable to work due to a work related Injury. This also includes if the Employer is unable to accommodate modified duty work within physical restrictions assigned by the treating physician.
9. "Covered Employee" and "Worker" means:
    a. Every person in the employment of an Employer, but does not include leased employees, independent contractors, consultants or volunteers.
    b. Excluded as not in the employ of an Employer are consultants, independent contractors and all other persons not considered under common law to be employed by an Employer unless a written contractual agreement between the Employee and Employer and such entity provides for occupational Injury Benefits. In the event of such a contract, the contract shall be specific as to whom, when, where, and why this coverage is provided by the Employer, and all third parties and/or Covered Employees shall agree to all terms, conditions, and provisions of this program.
10. "Dependent" means the husband or wife, father or mother, Child, grandfather or grandmother,

stepfather or stepmother, grandson or granddaughter, brother, sister, half-sister, half-brother, who at the time of the compensable Injury that causes the Covered Employee's death, is actually and necessarily dependent in whole or in part upon the earnings of the Covered Employee.

11. "Employer(s)" or "Employer(s) of the Tribe" means the Winnebago Tribe of Nebraska, as well as any of the Tribe's enterprises, subdivisions, or other operations. The Winnebago Tribe of Nebraska, or any of its enterprises, subdivisions or other operations, is a federally-recognized Indian Tribe acting at all times pursuant to its Constitution and Bylaws in a governmental capacity.
12. "Injury" means any physical or psychiatric Injury or illness arising from and occurring within the course and scope of their employment and includes Occupational Disease and death that is supported by medical documentation, provided that the only psychiatric injury or non-traumatic mental injury that may be considered an injury under this code is an injury that is the result of extraordinary circumstances, such that the situation is that of greater dimension than emotional strains and differences encountered by employees in that type of position daily without mental injury. Damage to or destruction of artificial member, dental appliances, teeth, hearing aids and eyeglasses/contacts, when a covered Injury is sustained. Injury is defined in two categories:
    a. Specifically Occurring. Specifically occurring means that the Injury is a result of one incident or exposure which causes disability or need for medical treatment; or
    b. Cumulative. "Cumulative" is defined as an Injury which is the result of repetitive mental or physical activities extending over a period of time, the combined effect of which causes any disability or need for medical treatment. The date of the Cumulative Injury is the date upon which the Covered Employee first suffered disability and knew, or in the exercise of reasonable diligence should have known, that the disability was caused by his/her present or prior employment.
13. "Maximum Medical Improvement" means the date after which no significant recovery from or significant lasting improvement to a personal Injury can reasonably be anticipated, based upon reasonable medical probability.
14. "Non-Scheduled Injuries" mean injuries that result in Permanent Partial Disability or Permanent Total Disability which are not defined as Scheduled Member Injuries.
15. "Occupational Disease" means a disease, which is causally related to the exposure of harmful conditions in the field of employment. A disease which follows from a hazard to which a Covered Employee has or would have been equally exposed outside of the occupation is not a compensable Occupational Disease.
16. "Occupational Injury Benefits" include Weekly Benefits and medical benefits further defined as follows:
    a. "Medical" means medical expense and other expenses associated with medical treatment reasonably related to the work Injury. Medical mileage expense will be paid at the prevailing federal mileage rate.
    b. "Weekly Benefit" means 66 2/3 percent of the Covered Employee's Average Weekly Wage. In the case of Temporary Partial Disability, the Weekly Benefit amount is 66 2/3 percent of the difference between the Covered Employee's average gross weekly earnings at the time of the Injury and the Covered Employee's while temporarily working at the lesser paying job. The maximum Weekly Benefit payable is $750.00. The minimum Weekly Benefit is $50.00.
    c. "Temporary Total Disability Benefits" (TTD Benefits) means the Weekly Benefit paid when an Injury results in three (3) or more calendar days of disability with a two (2) week retroactive period.
    d. "Temporary Partial Disability Benefits" (TPD Benefits) means the Weekly Benefits paid if the Covered Employee returns to work at a lesser paying job, because of the Injury but before the Covered Employee reaches Maximum Medical Improvement.
    e. "Permanent Partial Disability Benefits" (PPD Benefits) means the Weekly Benefits paid

for the partial loss of a scheduled member or a non-scheduled member.

f. "Permanent Total Disability Benefits" (PTD Benefits) means the Weekly Benefits paid for a non-scheduled Injury when the job-related Injury leaves a Covered Employee totally and permanently incapacitated. This means that the Covered Employee's physical disability causes the Covered Employee to be unable to secure anything more than sporadic employment resulting in an income of less than 90% of their Average Weekly Wage at the time of Injury.

g. "Death Benefits" means the Weekly Benefits paid to Dependents as a result of any fatality of the Covered Employee as a direct result of their employment.

17. "Scheduled Member Injuries" mean injuries that result in permanent partial impairment to the shoulder, arm, hand, thumb, finger, hip, leg, foot, toes, eyes, or ears as defined in Section 7-1229.
18. "Spouse" means legally married.
19. "Tribe" means the Winnebago Tribe of Nebraska.
20. "Worker's Compensation Appeals Committee" or "Committee" means the Committee defined in Section 7-1238. [TCR 08-27, 08-100]

7-1207 Notice of Injury to Employer & Filing of Clam with Administrator.

1. No Compensation for an Injury under this Code shall be provided unless a notice of the Injury shall have been given to the Employer or a claim filed with the Administrator as soon as practicable, but not more than thirty (30) calendar days, after the happening thereof; PROVIDED that all disputed claims for Compensation or Benefits shall be first submitted to the Worker's Compensation Appeals Committee.
   a. A traumatic or Cumulative Injury or Occupational Disease is deemed to have occurred when the Covered Employee knows or has reason to know that the Injury or disease is related to the Covered Employee's work activities, or when the Injury or disease causes the Covered Employee to be unable to work, whichever occurs first.
   b. If the Injury incapacitates the Covered Employee, time period days will not begin to run until the incapacity ends. In cases of incapacity which continue for more than fourteen (14) days, a Spouse or Dependent may report an Injury.
   c. All incidents resulting in death must be reported to the Administrator within a reasonable time, but not more than sixty (60) calendar days after the occurrence of death.
2. Notice to Employer. The notice shall be in writing and shall state in ordinary language the time, place, and cause of the Injury. It shall be signed by the person injured, or by a person in his or her behalf, or in the event of his or her death, by his or her legal representative or by a person in his or her behalf. Notice shall be served on the Employer or an agent thereof. Such service shall be made by first class mail receipt requested or by hand delivering the notice to a supervisor or manager of the Department for which the Covered Employee works.
3. A notice given pursuant to this Section shall not be held invalid or insufficient by reason of any inaccuracy in stating the time, place, or cause of the Injury, unless it is shown that it was the intention to mislead, and the Employer, or the Administrator, as the case may be, was in fact misled thereby.
4. The Employer shall provide Covered Employee with proper claim forms upon request and make such Claim Forms readily available to Covered Employees. Claim forms shall be filled out completely and may be faxed, mailed first-class postage pre-paid or hand-delivered to the Administrator or the Employer.
5. Time limits shall be calculated using calendar days. [TCR 08-27, 08-100]

7-1208 Administrator.

1. Administrator Responsibilities. The Administrator will act on behalf of the Employer in receiving, processing, and administering Worker's Compensation claims, including payment of Benefits under this Code. The responsibility of the Administrator to make determinations and decisions will include, but not be limited to, the following areas:
   a. Investigation. Based upon investigation and available information, the Administrator shall make a determination of the responsibility of the Employer and will either accept or deny a claim within fourteen (14) days of first notice, and will advise the parties of that determination. The Administrator may provide the Claimant with notice prior to the expiration of the fourteen (14) day investigation phase that additional time will be required to investigate this claim, which shall not exceed forty-five (45) days from the date of first notice. The notice shall state reasons of the need for additional time, which notice shall be subject to scrutiny, and may be considered in weighing the merits, by the Appeals Board in the event of an Appeal. Within forty-five (45) days of receipt of an initial report of Injury, the Administrator shall provide the Covered Employee and Employer a written decision of its determination. The written determination shall also describe the appeals process and applicable deadlines.
   b. Medical Care. The Administrator will determine the reasonableness and necessity of medical care, and charges will determine amounts payable under this Code. The Administrator will also approve or disapprove any request for a change in primary physician, referrals to a physician, or surgical procedure. The Administrator will retain appropriate medical control for the life of the claim.
   c. Compensation Rate. Based on information supplied by Employer and/or Covered Employee, the Administrator will determine the Compensation Rate payable for Temporary Total Disability (TTD), Temporary Partial Disability (TPD), Permanent Partial Disability (PPD) and Death Benefits and the length of time such Benefits shall be paid.
   d. Dependants. The Administrator will determine the eligibility of Dependents and terms of any Dependency Benefits payable. In the event of the need to allocate Dependency Benefits between Dependents living in different households, the Administrator will make the necessary allocation, based on the obligations, legal or otherwise, of the decedent.
   e. Interpretation. The Administrator, when carrying out responsibilities in this section and when making decisions related to the interpretation of this Code, including but not limited to decisions related to the calculation of benefits, may rely on tribal case law and if none exists then the State of Nebraska worker's compensation case law. [TCR 08-27, 08-100]

7-1209 Time Limit for Filing of Claim.

1. Traumatic and Cumulative injuries: No Compensation Benefits shall be paid or awarded under this Code unless the written claim for Benefits is made within the time period indicated in Section 7-1207, from the date of the claimed Injury or onset of symptoms in the case of Cumulative Injury, but in no event longer than thirty (30) calendar days from the date Covered Employee terminates employment with an Employer. Within thirty (30) calendar days of the date of filing a written claim for Benefits, the Covered Employee must seek treatment of the Injury, or no Compensation Benefits will be payable hereunder.
2. A claim for Benefits will be precluded from being processed where more than one year has elapsed from the date of last medical treatment for a covered Injury or where more than one year has elapsed from the date after the Covered Employee has reached Maximum Medical Improvements, and the Covered Employee has not prosecuted the claim.

3. In the case of Occupational Disease, no Compensation Benefits shall be paid or awarded under this Code unless the Covered Employee or the Covered Employee's Dependents or representative files a claim within the time period specified in Section 7-1207, from the date of discovery of the disease and its probable relationship to the employment, but in no event longer than thirty (30) calendar days from the date Covered Employee terminates employment with the Employer. [TCR 08-27, 08-100]

7-1210 Medical Treatment of Covered Employee.

1. A Covered Employee shall have only one treating health care provider at a time coordinating the Covered Employee's medical care. Covered Employees do not have the opportunity to select their treating physician. All medical appointments must be approved and authorized by the Administrator except in acute emergency situations. Any change in a health care provider must be approved by the Administrator prior to engagement of a new health care provider, except in emergency situations. Services rendered by a health care provider prior to such approval shall not be the responsibility of the Employer and shall not be paid.
2. The Administrator may reduce or suspend the Benefits of a Covered Employee whose actions interfere with or prolong the Covered Employee's recovery, including where the Covered Employee fails to timely seek appropriate medical attention, or reports ongoing treatment by a treating physician when in fact such treatment is not occurring, or who fails or refuses to seek treatment with the Employer's approved medical providers.
3. If a Covered Employee has two consecutive, unexcused scheduled appointments without authorization from the Administrator or without good cause, it could result in a suspension of all Benefits.
   a. Upon a showing of good cause by the Claimant, Benefits shall be reinstated.
   b. A Claimant has good cause for failing to attend a scheduled appointment if the Claimant has a reason that would cause a reasonably prudent person to fail to attend the appointment under the same or similar circumstances. Failure to attend for economic reasons shall constitute good cause. [TCR 08-27, 08-100]

7-1211 Independent Medical Examination.

1. A Covered Employee entitled to Benefits shall submit to independent medical examinations at reasonable intervals and a place reasonably convenient for the Covered Employee, if and when requested by the Administrator. The Covered Employee shall likewise submit to examination(s) at reasonable intervals by any physician selected by the Worker's Compensation Appeals Committee.
2. The request for medical examination shall fix a time and place for such examination(s), having regard to the convenience of the Covered Employee, the Covered Employee's physical condition and ability to attend. The Covered Employee may have a health care provider present at the examination(s) if procured and paid for by the Covered Employee. [TCR 08-27, 08-100]

7-1212 Effect of Refusal or Obstruction of Examination or Treatment.

1. If the Covered Employee refuses to submit to the medical examination(s) or obstructs the examination(s), the Covered Employee's right to Benefits shall be suspended until the examination(s) has been made, and no Benefits shall be payable during or for such period of refusal.
2. Upon submission and or cooperation in medical exams, the Covered Employee's rights to Benefits may be reinstated. [TCR 08-27, 08-100]

7-1213 Access to Medical Records and Medical Reports.

1. A Covered Employee, by filing a claim under this program, waives any claim to doctor/patient privilege. The Authorization to Release Medical Records form must accompany the First Report of Occupational Injury form.
2. The Employer or the Administrator shall have the right to present specific questions required to evaluate the claim, and to request a full and complete report from the Covered Employee's physician or surgeon or other medical Worker at any time and in the form and detail as deemed necessary.

3. The Covered Employee shall provide the Employer or Administrator with authorization to release medical records to obtain any medical information. Failure to execute a waiver or release for such medical information will result in an automatic denial of all Benefits. [TCR 08-27, 08-100]

7-1214 Aggravation of Pre-Existing Injury.

1. Apportionment of Benefits shall be made only through medical findings concerning apportionment of ratings between a Claimant's pre-existing Injury and that portion of the Claimant's symptoms brought about because of the work related Injury. [TCR 08-27, 08-100]

7-1215 Disclosure of Pre-Existing Disabilities.

1. If requested, all Covered Employees of an Employer or Covered Employee of Employers shall disclose any pre-existing physical or mental disorder or disability known to the Covered Employee that would prevent them from performing in a reasonable and safe manner the activities involved in the position applied for or in which they work.
2. Following such request, failure by the Covered Employee to disclose, prior to commencement of employment, a physical condition which prevented the Covered Employee from safely performing the work for which the Covered Employee was hired and which was a substantial contributing factor to the Injury shall exclude the Covered Employee from coverage under the provisions of this Coverage form. [TCR 08-27, 08-100]

7-1216 False Statement or Representation in Employment Application.

1. Any person who makes a false statement or representation in an employment application shall be denied Benefits if:
   a. The Covered Employee knowingly and willfully made a false representation as to his or her physical condition; and
   b. The Employer relied upon the false representation and the reliance was a substantial factor in hiring; and
   c. There must have been a causal connection between false representation and Injury. [TCR 08-27, 08-100]

7-1217 Benefits Mistakenly Awarded by Administrator.

1. The Covered Employee shall repay such Compensation approved by the Administrator that the Covered Employee is not entitled to and is received because of clerical error, mistaken identity, innocent misrepresentation mistakenly acted upon, or any other circumstance of a similar nature and not induced by fraud.
   a. Recoupment may be made from any future payments due the Covered Employee on any Workers Benefit claim. Or if no future payments are due to the Covered Employee, a payment plan shall be arranged between the Administrator and Covered Employee.

b. The Administrator or Employer must make a claim for such repayment or recoupment within one year of when the Compensation is paid or the repayment shall be barred.

c. The Covered Employee may appeal a claim for recoupment to the Worker's Compensation Appeals Committee.

i. The Worker's Compensation Appeals Committee may waive, at its discretion and in whole or in part, the amount of such timely claim for recoupment where the recovery would be against equity and good conscience. [TCR 08-27, 08-100]

7-1218 Benefits Mistakenly Awarded by the Worker's Compensation Appeals Committee.

1. In order to set aside, modify or change an award made by the Worker's Compensation Appeals Committee that was made as a result of a clerical error, mistaken identity, innocent representation mistakenly acted upon, or any other circumstance of a similar nature and not induced by fraud, a party must make such a claim to the Worker's Compensation Appeals Committee within one year of the Committee issuing the award. [TCR 08-27, 08-100]

7-1219 Benefits Induced by Proven Fraud.

1. Whenever the payment of Compensation to a Worker that was been approved either by the Administrator or by the Worker's Compensation Appeals Committee has been induced by fraud proven through a court of law, a claim for recoupment may be made from any future payments due the Worker on any Worker Benefit claim. If no future payments are due to the Covered Employee and the Employer or Administrator has obtained a judgment against the Covered Employee for recoupment of Benefits paid, such judgment may be enforced by the applicable laws of the court that issued it. [TCR 08-27, 08-100]

7-1220 Right to Occupational Injury Benefits.

1. When personal Injury is caused to a Covered Employee by accident or Occupational Disease, arising out of and in the course of his or her employment, such Covered Employee shall receive Compensation therefore from his or her Employer if the Covered Employee was not willfully negligent at the time of receiving such Injury. [TCR 08-27, 08-100]

7-1221 Employer's Liability to Medical, Surgical and Hospital Services.

1. The Employer is liable for all reasonable medical , surgical, and hospital services, including plastic surgery but not cosmetic surgery when the Injury has caused disfigurement, dental appliances, supplies, prosthetic devices, and medicines, when needed, which are required by the nature of the Injury and which will relieve pain or promote and hasten the Covered Employee's restoration to health and employment, and includes damages to or destruction of artificial members, dental appliances, teeth, and hearing aids, and eyeglasses, but, in the case of dental appliances, hearing aids, or eyeglasses, only if such damage or destruction resulted from an accident that also caused personal Injury entitling the Covered Employee to Compensation for disability or treatment, not to exceed the regular charge made for such services in similar cases. [TCR 08-27, 08-100]

7-1222 Selection of Treating Physician by Administrator.

1. The Administrator shall notify the Covered Employee, following a receipt of a claim for Benefits, of the Covered Employee's treating physician.

2. Once selection of the initial physician is made by the Administrator, the Employer or Covered Employee shall not change the initial selection of physician made pursuant to this subsection unless such a change is agreed to by the both the Covered Employee and the Administrator or is ordered by the Worker's Compensation Appeals Committee. [TCR 08-27, 08-100]

7-1223 Return to Work Form.

1. The Return to Work Recommendation Record is required for all medical appointments. This form must be obtained prior to the appointment and returned to the Employer prior to the start of the next scheduled shift. [TCR 08-27, 08-100]
2.

7-1224 Waiver by Covered Employee Invalid.

1. No agreement by a Covered Employee to waive his or her rights to Compensation under this Code shall be valid. [TCR 08-27, 08-100]

7-1225 Other Benefits Not Factors.

1. No savings or insurance of the injured Covered Employee or any contribution made by him or her to any Benefit fund or protective association independent of this Worker's Compensation Code shall be taken into consideration in determining the Compensation to be paid thereunder; nor shall Benefits derived from any other source other than those paid or caused to be paid by the Employer as herein provided be considered in fixing Compensation under such Code. [TCR 08-27, 08-100]

7-1226 Defenses to Liability Denied.

1. In all cases brought under this Code it shall not be a defense:
   a. That the Covered Employee was negligent, unless it shall also appear that such negligence was willful, or that the Covered Employee was in a state of intoxication;
   b. That the Injury was caused by the negligence of a fellow Covered Employee; or
   c. That the Covered Employee had assumed the risks inherent in, or incidental to, or arising from the failure of the Employer to provide and maintain safe premises. All defenses associated with assumption of the risk are hereby abolished. [TCR 08-27, 08-100]

7-1227 Average Weekly Wage.

1. The Average Weekly Wage is calculated by the average of the Covered Employee's gross wages earned during the twenty-six (26) calendar weeks preceding the date of Injury, not including unreported tips and/or bonuses. Overtime is not to be considered in computing wages unless it is regular and frequent throughout the year. The twenty-six weeks prior to the date of Injury are presumed representative, regardless of the wages earned. In the event that a Covered Employee is employed for less than twenty-six (26) consecutive calendar weeks immediately preceding the date of Injury, the Average Weekly Wage shall be determined using the gross wages divided by the actual number of weeks the Covered Employee worked during those weeks. If the Covered Employee's work week is fewer than five days per week or if there is an irregular number of days worked per week, the total number of days that a Covered Employee actually performed any of the duties of employment in the last 26 weeks is to be divided by the number of weeks in which the Covered Employee actually performed such duties, multiplied by the Covered Employee's daily wage. [TCR 08-27, 08-100]

7-1228 Maximum and Minimum Weekly Benefits.

1. The Maximum Weekly Benefits payable under this Code shall be $750.00 per week.
2. The Minimum Weekly Benefits payable under this Code shall be $50.00. [TCR 08-27, 08-100]

7-1229 Compensation; Schedule; Total, Partial, and Temporary Disability; Injury to Specific Parts of the Body; Amounts and Duration of Payments.

1. The following schedule of Compensation is hereby established for injuries resulting in disability:
   a. For total disability, the Compensation during such disability shall be sixty-six and two-thirds percent of the wages received at the time of Injury, but such Compensation shall not be more than the maximum Weekly Benefit specified in Section 7-1228 nor less than the minimum Weekly Benefit specified in Section 7-1228, except that if at the time of Injury the Covered Employee receives wages of less than the minimum Weekly Benefit specified in Section 7-1228, then he or she shall receive the full amount of such wages per week as Compensation. Nothing in this subdivision shall require payment of Compensation after disability shall cease;
   b. For disability partial in character, except the particular cases mentioned in subdivision (c) of this Section, the Compensation shall be sixty-six and two-thirds percent of the difference between the wages received at the time of the Injury and the earning power of the Covered Employee thereafter, but such Compensation shall not be more than the maximum Weekly Benefit specified in Section 7-1228. This Compensation shall be paid during the period of such partial disability but not beyond three hundred weeks. Should total disability be followed by partial disability, the period of three hundred weeks mentioned in this subdivision shall be reduced by the number of weeks during which Compensation was paid for such total disability;
   c. For disability resulting from permanent Injury of the classes listed in this subdivision, the Compensation shall be in addition to the amount paid for temporary disability, except that the Compensation for temporary disability shall cease as soon as the extent of the permanent disability is ascertainable. For disability resulting from permanent Injury of the following classes, Compensation shall be:
      i. For the loss of a thumb, sixty-six and two-thirds percent of daily wages during sixty weeks.
      ii. For the loss of a first finger, commonly called the index finger, sixty-six and two-thirds percent of daily wages during thirty-five weeks.
      iii. For the loss of a second finger, sixty-six and two-thirds percent of daily wages during thirty weeks.
      iv. For the loss of a third finger, sixty-six and two-thirds percent of daily wages during twenty weeks.
      v. For the loss of a fourth finger, commonly called the little finger, sixty-six and two-thirds percent of daily wages during fifteen weeks.
      vi. The loss of the first phalange of the thumb or of any finger shall be considered to be equal to the loss of one-half of such thumb or finger and Compensation shall be for one-half of the periods of time above specified, and the Compensation for the loss of one-half of the first phalange shall be for one-fourth of the periods of time above specified.
      vii. The loss of more than one phalange shall be considered as the loss of the entire finger or thumb, except that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.
      viii. For the loss of a great toe, sixty-six and two-thirds percent of daily wages during thirty weeks.

ix. For the loss of one of the toes other than the great toe, sixty-six and two-thirds percent of daily wages during ten weeks.

x. The loss of the first phalange of any toe shall be considered equal to the loss of one-half of such toe, and Compensation shall be for one-half of the periods of time above specified.

xi. The loss of more than one phalange shall be considered as the loss of the entire toe.

xii. For the loss of a hand, sixty-six and two-thirds percent of daily wages during one hundred seventy-five weeks.

xiii. For the loss of an arm, sixty-six and two-thirds percent of daily wages during two hundred twenty-five weeks.

xiv. For the loss of a foot, sixty-six and two-thirds percent of daily wages during one hundred fifty weeks.

xv. For the loss of a leg, sixty-six and two-thirds percent of daily wages during two hundred fifteen weeks.

xvi. For the loss of an eye, sixty-six and two-thirds percent of daily wages during one hundred twenty-five weeks.

xvii. For the loss of an ear, sixty-six and two-thirds percent of daily wages during twenty-five weeks.

xviii. For the loss of hearing in one ear, sixty-six and two-thirds percent of daily wages during fifty weeks.

xix. For the loss of the nose, sixty-six and two-thirds percent of daily wages during fifty weeks.

d. In any case in which there is a loss or loss of use of more than one member or parts of more than one member set forth in this subdivision, but not amounting to total and permanent disability, Compensation Benefits shall be paid for the loss or loss of use of each such member or part thereof, with the periods of Benefits to run consecutively. The total loss or permanent total loss of use of both hands, or both arms, or both feet, or both legs, or both eyes, or hearing in both ears, or of any two thereof, in one accident, shall constitute total and permanent disability and be compensated for according to subdivision (a) of this Section. In all other cases involving a loss or loss of use of both hands, both arms, both feet, both legs, both eyes, or hearing in both ears, or of any two thereof, total and permanent disability shall be determined in accordance with the facts. Amputation between the elbow and the wrist shall be considered as the equivalent of the loss of a hand, and amputation between the knee and the ankle shall be considered as the equivalent of the loss of a foot. Amputation at or above the elbow shall be considered as the loss of an arm. Permanent total loss of the use of a finger, hand, arm, foot, leg, or eye shall be considered as the equivalent of the loss of such finger, hand, arm, foot, leg, or eye. In all cases involving a permanent partial loss of the use or function of any of the members mentioned in this subdivision, the Compensation shall bear such relation to the amounts named in such subdivision as the disabilities bear to those produced by the injuries named therein.

e. If, in the Worker's Compensation Appeals Committee's discretion, Compensation Benefits payable for a loss or loss of use of more than one member or parts of more than one member set forth in this subdivision, resulting from the same accident or illness, do not adequately compensate the Covered Employee for such loss or loss of use and such loss or loss of use results in at least a thirty percent loss of earning capacity, the Worker's Compensation Appeals Committee shall, upon request of the Covered Employee, determine the Covered Employee's loss of earning capacity consistent with the process for such determination under subdivision (a) and (b) of this Section, and in such a case the Covered Employee shall not be entitled to Compensation under this subdivision.

f. If the Employer and the Covered Employee are unable to agree upon the amount of Compensation to be paid in cases not covered by the schedule, the amount of Compensation shall be settled by the Worker's Compensation Appeals Committee. Compensation under this subdivision shall not be more than the maximum Weekly Benefit specified in Section 7-1228 nor less than the minimum Weekly Benefit specified in Section 7-1228, shall not be more than 300 weeks, and the 300 week maximum shall be reduced by the number of weeks that the Employee has already received benefits. If at the time of the Injury the Covered Employee received wages of less than the minimum Weekly Benefit specified in Section 7-1228, then he or she shall receive the full amount of such wages per week as Compensation.

g. For disability resulting from permanent disability, if immediately prior to the accident the rate of wages was fixed by the day or hour, or by the output of the Covered Employee, the weekly wages shall be taken to be computed upon the basis of a workweek of a minimum of five days, if the wages are paid by the day, or upon the basis of a workweek of a minimum of forty hours, if the wages are paid by the hour, or upon the basis of a workweek of a minimum of five days or forty hours, whichever results in the higher weekly wage, if the wages are based on the output of the Covered Employee.

h. The Covered Employee shall be entitled to Compensation from his or her Employer for temporary disability while undergoing physical or medical rehabilitation and while undergoing vocational rehabilitation whether such vocational rehabilitation is voluntarily offered by the Employer. [TCR 08-27, 08-100]

7-1230 Exclusions from Coverage.

1. The following shall be excluded from coverage under this program:
   a. Claims due to tobacco use or second-hand smoke in the workplace shall not be compensable.
   b. Claims due to injuries caused by silica or silica related dust shall not be compensable.
   c. Claims due to injuries or disease caused by mold shall not be compensable. [TCR 08-27, 08-100]

7-1231 Waiting Period for Benefits.

1. No Compensation shall be allowed for the first three (3) calendar days of disability, except as provided in Section 7-1221, but if disability extends beyond the period of three (3) calendar days, Compensation shall begin on the fourth calendar day of disability, except that if such disability continues for two (2) weeks or longer, Compensation shall be computed from the date disability began. For purposes of this Section, a partial day of disability shall be deemed a calendar day of disability. [TCR 08-27, 08-100]

7-1232 Injuries Causing Death.

1. Injury Causing Death. If an Injury sustained by an Covered Employee results in the Covered Employee's death within two (2) years following the Injury, and the deceased Covered Employee leaves one or more Dependents dependent upon his or her earnings for support at the time of Injury, the Compensation, subject to Section 7-1228, shall not be more than the maximum Weekly Benefit nor less than the minimum Weekly Benefit specified in Section 7-1228; PROVIDED, that if at the time of Injury the Covered Employee receives wages of less than the minimum Weekly Benefit specified in Section 7-1228, then the Compensation shall be the full amount of such wages per week, payable in the amount and to the person enumerated in Section 7-1232(2).

2. Definitions for Purposes of Benefits associated with Compensation of Death. For purposes of defining Dependents associated with receiving Compensation of Death Benefits or burial expenses, the following shall apply:
   a. The following persons shall be conclusively presumed to be dependent for support upon a deceased Covered Employee:
      i. A wife upon a husband with whom she is living or upon whom she is actually dependent at the time of his Injury or death;
      ii. A husband upon a wife with whom he is living or upon whom he is actually dependent at the time of her Injury or death; and
      iii. A Child or Children under the age of nineteen years, or over such age, if physically or mentally incapable of self-support, or any Child nineteen years of age or over who is actually dependent, or any Child between nineteen and twenty-five years of age who is enrolled as a full-time student in any accredited educational institution.
   b. The term Child shall include a posthumous Child, a Child legally adopted or for whom Adoption proceedings are pending at the time of death, an actually Dependent Child in relation to whom the deceased Covered Employee stood in the place of a parent for at least one year prior to the time of death, an actually Dependent stepchild, or a Child born out of wedlock. Child shall not include a married Child unless receiving substantially entire support from the Covered Employee. Grandchild shall mean a Child, as above defined, of a Child, as above defined, except that as to the latter Child, the limitations as to age in the above definition do not apply.
   c. Brother or sister shall mean a brother or sister under nineteen years of age, or nineteen years of age or over and physically or mentally incapable of self-support, or nineteen years of age or over and actually dependent. The terms brother and sister shall include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by Adoption but shall not include married brothers or married sisters unless receiving substantially entire support from the Covered Employee.
   d. Parent shall mean a mother or father, a stepparent, a parent by Adoption, a parent-in-law, and any person who for more than one year immediately prior to the death of the Covered Employee stood in the place of a parent to him or her, if actually dependent in each case.
   e. Actually dependent shall mean dependent in fact upon the Covered Employee and shall refer only to a person who received more than half of his or her support from the Covered Employee and whose dependency is not the result of failure to make reasonable efforts to secure suitable employment. When used as a noun, the word Dependent shall mean any person entitled to Death Benefits. No person shall be considered a Dependent, unless he or she be a member of the family of the deceased Covered Employee, or bears to him or her the relation of widow, widower, lineal descendant, ancestor, brother, or sister. Questions as to who constitute Dependents and the extent of their dependency shall initially be determined as of the date of the accident to the Covered Employee, and the Death Benefit shall be directly recoverable by and payable to the Dependent or Dependents entitled thereto or their legal guardians or trustees. No Dependent of any injured Covered Employee shall be deemed, during the life of such Covered Employee, a party in interest to any proceeding by him or her for the enforcement or collection of any claim for Compensation, nor as respects the compromise thereof by such Covered Employee. [TCR 08-27, 08-100]

7-1233 Computation of Payments of Death Benefits.

1. When death results from injuries suffered in employment, if immediately prior to the accident the

rate of wages was fixed by the day or hour, or by the output of the Covered Employee, the weekly wages shall be taken to be computed upon the basis of a workweek of a minimum of five days, if the wages are paid by the day, or upon the basis of a workweek of a minimum of forty hours, if the wages are paid by the hour, or upon the basis of a workweek of a minimum of five days or forty hours, whichever results in the higher weekly wage, if the wages are based on the output of the Covered Employee. [TCR 08-27, 08-100]

7-1234 Death Benefit Compensation Schedule.

1. Compensation under Section 7-1233 shall be payable in the amount and to the following persons subject to the maximum limits specified in Section 7-1228.
2. If there is a widow or widower of the deceased and no Children of the deceased, as defined in Section 7-1232(2), to such widow or widower, sixty-six and two-thirds percent of the Average Weekly Wage of the deceased, as computed in Section 7-1233, during widowhood or widowerhood.
3. One year's Death Benefits in one-lump sum shall be payable to a widow or widower upon remarriage and thereafter Death Benefits shall cease.
   Two years' Death Benefits in one lump-sum shall be payable to a widow or widower upon reaching the age of 65.
4. To the Children, if there is no widow or widower, sixty-six and two thirds percent of such wage for one Child, and fifteen percent for each additional Child, divided among such Children, share and share alike.
5. The income Benefits payable on account of any Child under this Section shall cease when he or she dies, marries, or reaches the age of nineteen, or when a Child over such age ceases to be physically or mentally incapable of self-support, or if actually dependent reaches the age of twenty-five. A Child who originally qualified as a Dependent by virtue of being less than nineteen years of age may, upon reaching age nineteen, continue to qualify if he or she satisfies the tests of being physically or mentally incapable of self-support, actual dependency, or enrollment in an educational institution.
6. If there is no widow or widower and no Children, then to each parent, if actually dependent, thirty-three and one-third percent of such wage for each parent.
7. If there is no widow or widow, Children, or parent, then to each grandchild, if actually dependent, sixty-six and two-thirds percent of such wage for one grandchild, and fifteen percent for each additional grandchild, divided among such grandchildren, share and share alike.
8. If there is no widow or widower, Children, parents, or grandchildren, then to brothers and sisters, and grandparents, if actually dependent, twenty-five percent of such wage to each such Dependent. If there should be more than one such Dependent, the total Death Benefits payable on account of such Dependents shall be divided share and share alike.
9. The income Benefits of each beneficiary under subdivisions (7), (8), and (9) of this Section shall be paid until he or she, if a parent or grandparent, dies, marries, or ceases to be actually dependent, or, if a brother, sister, or grandchild, dies, marries, or reaches the age of nineteen, or ceases to be actually dependent.
10. With respect to the beneficiaries under subdivisions (7), (8), and (9) a person ceases to be actually dependent when his or her income from all sources exclusive of such Death Benefits is such that, if it had existed at the time as of which the original determination of actual dependency was made, it would not have supported a find of dependency. In any event, if the present annual income of an actual Dependent person including Worker's Compensation Death Benefits at any time exceeds the total annual support received by the person from the deceased Covered Employee, the Worker's Compensation Benefits shall be reduced so that the total amount of income is no greater than such amount of annual support received from the deceased Covered Employee. In all cases, a person found to be actually dependent shall be presumed to be no

longer actually dependent three years after each time as of which the person was found to be actually dependent. This presumption may be overcome by proof of continued actual dependency.

11. Upon the cessation of income Benefits under this Section to or on account of any person, the income Benefits of the remaining persons entitled to benefits for the unexpired part of the period during which their income Benefits are payable shall be that which such persons would have received if they had been the only persons entitled to income Benefits at the time of the decedent's death. [TCR 08-27, 08-100]

7-1235 Death of Covered Employee Ends Disability Payments.

1. The death of an injured Covered Employee prior to the expiration of the period within which he or she would receive such disability payment shall be deemed to end such disability, and all liability for the remainder of such payment which he or she would have received in case he or she had lived shall be terminated, but the Employer shall thereupon be liable for the following Death Benefit in lieu of any further disability indemnity: if the Injury so received by the Covered Employee was the cause of his or her death and such deceased Covered Employee leaves Dependents as hereinbefore specified, the Death Benefits shall be sum sufficient, when added to the indemnity which shall at the time of death have been paid or become payable under this Code to such deceased Covered Employee, to make the total Compensation for the Injury and death equal to the full amount which such Dependents would have been entitled to receive under Section 7-1233, in case the accident had resulted in immediate death; and made under such Section. No deduction shall be made for the amount which may have been paid for medical and hospital services and medicines or for the expenses of burial. If the Covered Employee dies from some cause other than the Injury, there shall be no liability for Compensation to accrue after his or her death. [TCR 08-27, 08-100]

7-1236 Burial Expenses.

1. Upon the death of a Covered Employee, resulting through personal injuries as herein defined, whether or not there be Dependents entitled to Compensation, the reasonable expenses of burial, not exceeding six thousand dollars, without deduction of any amount previously paid or to be paid for Compensation or for medical expenses, shall be paid to his or her Dependents, or if there be no Dependents, then reasonable expenses of burial, not to exceed not to exceed six thousand dollars and the expenses provided for medical and hospital services for the deceased, together with any accrued Benefits up to the time of death, and shall be payable to the estate of the deceased. [TCR 08-27, 08-100]

7-1237 Waiting Time Penalty.

1. Except as provided, all amounts of Compensation payable under this Code shall be payable periodically in accordance with the methods of payment of wages of the Covered Employee at the time of the Injury or death. Fifty percent shall be added for waiting time for all delinquent payments after thirty days' notice has been given of disability or after thirty days from the entry of a final order, award, or judgment of the Worker's Compensation Appeals Committee, except for any award or judgment against the Tribe in excess of the policy limits of the Employer's Worker's Compensation insurance provider. Such award in excess is not compensable under this Code or subject to any penalty. Such payments shall be sent directly to the person entitled to Compensation or his or her designated representative. [TCR 08-27, 08-100]

7-1238 Worker's Compensation Appeals Committee.

1. The Worker's Compensation Appeal Committee shall be comprised of five (5) members. The Tribal Council shall appoint the five (5) individuals to serve on the Appeals Board to hear issues on appeal and make any necessary final determination related to compensability of a Work Injury, medical care or charges, extent of Disability, Dependency, or any other issue that may arise in an appeal filed under this Code. The Appeal Board will be appointed on an as-needed basis and on a case-by-case basis. The Appeals Board will hear issue(s) de novo (anew, over again from the beginning). Three (3) members will constitute a quorum.
2. Composition of the Committee. The members of the Appeals Board shall include one member of the Tribe, who may or may not be a member of the Tribal Council, two non-managerial Covered Employees of the Tribe, one Committee member of the Committee who works within the Human Resources Department or Finance Department of the Tribe, and one member who has knowledge in labor law who is not a Tribal Covered Employee.
3. The Worker's Compensation Appeal Committee shall receive reasonable expenses related to participation on the Appeals Board and such Compensation shall be paid for by the Tribe. Expenses for training in the area of occupational Injury Benefits shall be paid by the Winnebago Tribe of Nebraska. [TCR 08-27, 08-100]

7-1239 Procedures for Disputed Claims.

1. In the event of any dispute over the amount of payment of Benefits, delinquent payments, denial of a claim, suspension or termination of Benefits payable under this program, the Claimant shall have the right to appeal the disputed claim as follows:
   a. Claimant must request reconsideration by the Administrator. The reconsideration request must be made in writing, specifying what action is in dispute, why the Claimant disagrees with the Administrator's action and the desired result. Any additional supporting documentation or evidence to be considered must be submitted by the Claimant with the reconsideration request unless an extension of time to submit such evidence is specifically requested in the reconsideration request. The request for reconsideration must be filed within thirty (30) calendar days of the date of the Administrator's adverse action or decision. A reconsideration request is deemed filed upon mailing by regular or certified mail. Failure to request reconsideration within that time period is deemed a waiver of any further rights of appeal herein.
   b. Upon denial of the reconsideration request or an adverse decision of the reconsideration request, the Claimant may request a hearing before the Worker's Compensation Appeals Committee. [TCR 08-27, 08-100]

7-1240 Hearing Request Procedures.

1. The hearing request must be made in writing and shall contain a plain, concise statement of the disputed action of the Administrator, the date of the action and the Claimant's reasons for appeal. Claimants should make their request as clear and complete and possible, and hearing requests shall include the following items and be completed in the following manner:
   a. All issues which the Claimant intends to bring before the Worker's Compensation Appeals Committee. Any issues not raised in the request for hearing application by either party are deemed waived.
   b. Any new supporting documentation or evidence to be considered must be submitted by the Claimant with the hearing request unless an extension of time to do so is specifically requested in the hearing request.
   c. A request for hearing must be filed by mail or hand-delivered to Director Of Human

Resources for the Covered Employee's Employer, within fourteen (14) calendar days of the date of the Administrator's adverse decision of a Covered Employee's reconsideration request. Mailed requests shall be sent to: the Worker's Compensation Appeals Committee, Winnebago Tribe of Nebraska, P.O. Box 687, Winnebago, NE 68071.

d. A hearing request is deemed filed upon mailing by regular or certified mail.

e. Failure to request a hearing within the above time period shall be deemed a waiver of any further right of appeal herein.

2. The burden of proof, throughout the above appeal process, rests on the Covered Employee to prove that the Covered Employee sustained an Injury which is directly related to the employment and that the Covered Employee is entitled to the Benefits claimed under this program.

3. A Claimant may be represented in an appeal by any person. Where a Claimant is successful in overturning an adverse decision by the Administrator or is successful in obtaining an increase in benefits, which were previously denied by the Administrator, reasonable attorneys fees shall be allowed to the Claimant. Attorney's fees shall not be deducted from the amounts ordered to be paid for medical services nor shall attorney fees be charged to medical providers. When attorney fees are awarded by the Workers Compensation Appeals Committee, such awards are charged to the Employer and are payable within thirty (30) days of the Committee issuing such decision.

4. Hearing procedures before the Worker's Compensation Appeals Committee:

a. Upon filing of a request for hearing before the Worker's Compensation Appeals Committee, a copy of the hearing request and all supporting evidence submitted by the Covered Employee shall be sent by the Employer to the Administrator within fourteen (14) calendar days of receipt of the hearing request. The Administrator, as the adverse party in this proceeding, shall have fourteen (14) calendar days to file a written response with the Worker's Compensation Appeals Committee, with a copy to the Covered Employee. Any issues not raised at the time of hearing by either party are deemed waived.

b. Any member of the Worker's Compensation Appeals Committee having any personal interest in any claim or appeal presented before the Committee shall be disqualified for cause. A Claimant shall have the right to challenge for cause any member of the Committee and in the event that disqualification(s) results in less than a quorum, alternate members shall be temporarily appointed to serve by the Tribal Council.

c. A Claimant or the Claimant's representative shall have the right, in all matters presented before the Worker's Compensation Appeals Committee, to cross-examine all witnesses and to review all evidence of any nature, as may relate to the matter under consideration.

d. The Worker's Compensation Appeals Committee, the Administrator and the Claimant shall have the right to cross-examine all witnesses and to perform such discovery activity as may be deemed necessary to fully explore all aspects surrounding the occurrence and Injury.

e. The Worker's Compensation Appeals Committee shall not be bound by the rules of evidence or by technical or formal rules of procedure and may conduct investigations in such a manner that is best calculated to ascertain the substantial rights of the parties and to carry out the spirit of the Winnebago Tribe of Nebraska Worker's Compensation Code. Either party may request development of further medical evidence. The Administrator has the right to designate an examining medical expert at the Administrator's expense. Failure of the Covered Employee to comply with any reasonable request for examination will result in dismissal of Covered Employee's appeal with prejudice.

5. A full and complete record shall be kept of all proceedings held before the Worker's Compensation Appeals Committee for investigation, appeals, or the taking of testimony by an electronic recording means. A party may request the proceeding be reported by a certified stenographer at the requesting party's expense.

6. The Worker's Compensation Appeals Committee shall convene as necessary, but in no event will a Covered Employee be deprived of a hearing for more than forty-five (45) days after the Worker's Compensation Appeals Committee's receipt of written hearing request, unless a request for extension of time has been filed by a party.
7. All parties shall have the right to request a continuance of the hearing after it has first convened for the purpose of further developing evidence.
8. The Worker's Compensation Appeals Committee shall act only by majority vote, in writing and with at least three (3) members present and voting. The Worker's Compensation Appeals Committee may utilize Tribally-approved attorneys as legal counsel. A written decision will be issued by the Worker's Compensation Appeals Committee within thirty (30) calendar days of the hearing, which will become final and binding on the parties.
9. During the pendency of the appeal, Claimant shall continue to receive all Benefits approved by the Administrator in its original written decision, but shall not receive any new Benefits claimed in the appeal. Payments made to Claimant during the pendency of an appeal shall not be recouped or recovered by the Administrator or the Employer.
10. Any award agreed to by the Claimant for Benefits under this program shall constitute a full and final settlement and all Benefits shall cease upon settlement, except where the award provides for other than a lump sum settlement. If other than a lump sum settlement, the terms of the award agreement shall apply. [TCR 08-27, 08-100]

7-1241 Experts.

1. The Covered Employee may engage the services of medical or vocational experts for purposes of a disputed claim, at the Covered Employee's cost, which is not reimbursable regardless of the ultimate outcome of the dispute. The opinions of such experts will be considered in a disputed case. [TCR 08-27, 08-100]

7-1242 Liability of Third Person to Injured Covered Employee; Subrogation Powers.

1. When a third person is liable to the Covered Employee or to the Dependents for the Injury or death of the Covered Employee, the Employer shall be subrogated to the right of the Covered Employee or to the dependants against such third person. The recovery by such Employer shall not be limited to the amount payable as Compensation to such Covered Employee or Dependents, but such Employer may recover any amount which such Covered Employee or his or her Dependents should have been entitled to recover. Any recovery by the Employer against such third person, in excess of the Compensation paid by the Employer after deducting the expenses and making such recovery, shall be paid forthwith to the Covered Employee or to the Dependents and shall be treated as an advance payment by the Employer on account of any future installments of Compensation. [TCR 08-27, 08-100]

7-1243 Third Party Claim Procedures and Notice.

1. Before making a claim or bringing suit against a third person by the Covered Employee or his or her personal representative or by the Employer or his or her Worker's Compensation insurer, thirty days notice shall be given to the other potential parties, unless such notice is waived in writing, of the opportunity to join in such claim or action and to be represented by counsel.
   a. After the expiration of thirty days, for failure to receive notice or other good cause shown, the court before which the action is pending shall allow either party to intervene in such action, and if no action is pending then the court in which it could be brought shall allow either party to commence such action.
   b. Each party shall have an equal voice in the claim and the prosecution of such suit, and

any dispute arising shall be passed upon by the court before which the case is pending, and if no action is pending then by the court in which the action could be brought.

2. If either party makes a claim or prosecutes a third-party action without giving notice to the other party, the party bringing the claim and prosecuting such action shall not deduct expenses or attorney's fees from the amount payable to the other party. [TCR 08-27, 08-100]

7-1244 Third Party Claims & Attorney Fees.

1. If the Covered Employee or his or her personal representative or the Employer or his or her Worker's Compensation insurer join in prosecuting such claim and are represented by counsel, the reasonable expenses and the attorney's fees shall be, unless otherwise agreed upon, divided among such attorneys as directed by the court before which the case is pending, and if no action is pending then by the court in which the action could be brought.
2. If either party after received notice under Section 7-1243 fails, by and through his or her attorney, to join in the third-party claim or suit such party waives any and all claims or causes of action for improper prosecution of the third-party suit or inadequacy of a settlement made in accordance with Section 7-1245. The party bringing the claim or prosecuting the suit is entitled to deduct from any amount recovered the reasonable expenses of making such recovery, including a reasonable sum for attorney's fees. Such expenses and attorney's fees shall be prorated (1) to the amount payable to the Employer or his or her Worker's Compensation insurer under the right of subrogation established in Section 7-1242 and (2) to the amount in excess of such amount payable to the Employer or his or her Worker's Compensation insurer under the right of subrogation. Such expenses and attorney's fees shall be apportioned by the court, which heard the claim, between the parties as their interests appear at the time of such recovery.
3. Nothing in this Worker's Compensation Code shall be construed to deny the right of an injured Covered Employee or of his or her personal representative to bring suit against such third person in his or her own name or in the name of the personal representative based upon such liability, but in such event an Employer having paid or paying Compensation to such Covered Employee or his or her Dependents shall be made a party to the suit for the purpose of reimbursement, under the right of subrogation, of any Compensation paid. [TCR 08-27, 08-100]

7-1245 Third Party Claims; Settlement Requirements.

1. A settlement of a third-party claim under the Winnebago Tribe Worker's Compensation Code is void unless:
   a. Such settlement is agreed upon in writing by the Covered Employee or his or her personal representative and the Worker's Compensation insurer of the Employer, if there is one, and if there is no insurer, then by the Employer, or
   b. In the absence of such agreement, the court before which the action is pending determines that the settlement offer is fair and reasonable considering liability, damages, and the ability of the third party person and his or her liability insurance carrier to satisfy any judgment.
2. If an Covered Employee or his or her personal representative or the Employer or his or her Worker's Compensation insurer do not agree in writing upon distribution of the proceeds of any judgment of settlement, the court before which the action was heard, or if no action was filed then the court in which it could be brought, shall order a fair and equitable distribution of the proceeds of any judgment or settlement. [TCR 08-27, 08-100]

7-1246 Awards.

1. Any awards issued by the Worker's Compensation Appeals Committee are strictly limited to the

amount of per accidence or per occurrence coverage as provided in the Employer's Worker's Compensation Insurance Policy. In no event shall the Committee grant an award in excess of the policy limits. [TCR 08-27, 08-100]

TITLE 7
ARTICLE 13
FLOOD DAMAGE PREVENTION CODE
(Revised November 4, 2011)

7-1301 Findings of Fact.
7-1302 Statement of purpose.
7-1303 Methods of reducing flood losses.
7-1304 Definitions.
7-1305 Land to which this Article applies.
7-1306 Basis for establishing the area of special flood hazard.
7-1307 Penalties for non-compliance.
7-1308 Abrogation of greater restrictions.
7-1309 Interpretation.
7-1310 Warning and disclaimer of liability.
7-1311 Establishment of development permits.
7-1312 Administration.
7-1313 Duties and responsibilities of the Administrator.
7-1314 Variance procedures.
7-1315 General standards for flood hazard reduction.
7-1316 Specific standards for flood hazard reduction.
7-1317 Before regulatory floodway.
7-1318 Floodways.
7-1319 Critical Facility.

7-1301 Findings of fact.

1. The flood hazard areas of the Winnebago Tribe of Nebraska are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
2. These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards, which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, elevated, or otherwise protected from flood damage also contribute to the flood loss. [TCR 11-29]

7-1302 Statement of purpose. It is the purpose of this Article to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

1. To protect human life and health;
2. To minimize expenditure of public money and costly flood control projects;
3. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
4. To minimize prolonged business interruptions;
5. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in areas of special flood hazard;
6. To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;
7. To ensure that potential buyers are notified that property is in an area of special flood hazard;
8. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions; and
9. To protect Tribal resources. [TCR 11-29]

7-1303 Methods of reducing flood losses. In order to accomplish its purposes, this Article includes methods and provisions for:

1. Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
2. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
3. Controlling the alteration of natural flood plains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
4. Controlling filling, grading, dredging, and other development which may increase flood damage; and
5. Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or may increase flood hazards in other areas. [TCR 11-29]

7-1304 Definitions. Unless specifically defined below, words or phrases used in this Article shall be interpreted so as to give them the meaning they have in common usage and to give this Article its most reasonable application.

1. "Appeal" means a request for a review of the Administrator's interpretation of any provision of this Article or a request for a variance.
2. "Area of Special Flood Hazard" means the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. Designation on maps always includes the letters A or V.
3. "Base Flood" means the flood having a one percent chance of being equaled or exceeded in any given year. Also referred to as the "100-year flood." Designation on maps always includes the letters A or V.
4. "Basement" means any area of the building having its floor subgrade (below ground level) on all sides.
5. "Critical Facility" means a facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to schools, nursing homes, hospitals, police, fire and emergency response installations, installations which produce, use or store hazardous materials or hazardous waste.
6. "Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials located within the area of special flood hazard.
7. "Elevated Building" means for insurance purposes, a nonbasement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, post, piers, pilings, or columns.
8. "Existing Construction" means (for the purpose of determining rates) structures for which the "start of construction" commenced before the effective date of the Flood Insurance Rate Map ("FIRM") or before January 1, 1975, for FIRM's effective before that date. "Existing construction" may also be referred to as "existing structures."
9. "Existing Manufactured Home Park or Subdivision" means a manufactured home park subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the adopted floodplain management regulations.
10. "Expansion to an Existing Manufactured Home Park or Subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured

homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

11. "Flood" or "Flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:
    a. The overflow of inland or tidal waters and/or
    b. The unusual and rapid accumulation of runoff of surface waters from any source.
12. "Flood Fringe" is that area of the floodplain, outside of the floodway, that on the average is likely to be flooded once every 100 years (i.e., that has a one percent chance of flood occurrence in any one year).
13. "Flood Insurance Rate Map (FIRM)" means the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.
14. "Flood Insurance Study" means the official report provided by the Federal Insurance Administration that includes flood profiles and the water surface elevation of the base flood.
15. "Floodplain" means any land area susceptible to being inundated by water from any source (see definition of "flooding").
16. "Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.
17. "Freeboard" means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size of flood and floodway conditions, such as wave action, clogged bridge openings, and the hydrological effect of urbanization of the watershed.
18. "Highest Adjacent Grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of construction.
19. "Lowest Floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Article found at Section 5.2-1(2).
20. "Manufactured Home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."
21. "Manufactured Home Park or Subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.
22. "New Construction" means structures for which the "start of construction" commenced on or after the effective date of this Article.
23. "New Manufactured Home Park or Subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of adopted floodplain management regulations.
24. "Overlay District" means a district in which additional requirements act in conjunction with the underlying zoning district(s). The original zoning district designation does not change.
25. "Principally Above Ground" means that at least 51% of the actual cash value of the structure is above ground.
26. "Recreational Vehicle" means a vehicle which is:
    a. Built on a single chassis;
    b. 400 square feet or less when measured at the largest horizontal projection;

c. Designed to be self-propelled or permanently towable by a light duty truck; and
d. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

27. "Special Flood Hazard Area" is the land in the floodplain within a community subject to 1% or greater chance of flooding in any given year.
28. "Start of Construction" includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.
29. "Structure" means a walled and roofed building including a gas or liquid storage tank that is principally above ground.
30. "Substantial Damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.
31. "Substantial Improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:
    a. Before the improvement or repair is started; or
    b. If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

    The term does not, however, include either:
    a. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or
    b. Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.
32. "Variance" means a grant of relief from the requirements of this Article which permits construction in a manner that would otherwise be prohibited by this Article.
33. "Violation" means a failure of a structure or other development to be fully compliant with this Article.
34. "Water Dependent" means a structure for commerce or industry which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations. [TCR 11-29]

7-1305 Land to which this Article applies. This Article shall apply to all areas of special flood hazards within the jurisdiction of the Winnebago Tribe of Nebraska. [TCR 11-29]

7-1306 Basis for establishing the area of special flood hazard.

1. The areas of special flood hazard identified by a Federal Insurance Administration in scientific and engineering reports entitled "Flood Insurance Study" prepared for Thurston County, Nebraska and incorporated areas, including the Winnebago Tribe of Nebraska," dated January 6, 2010, as amended, with accompanying and applicable Flood Insurance Rate Maps (FIRM), as amended, are hereby adopted by reference and declared to be a part of this Article.
2. The areas of special flood hazard identified by a Federal Insurance Administration in scientific and engineering reports entitled "Flood Insurance Study" prepared for Woodbury County, Iowa and incorporated areas, including the Winnebago Tribe of Nebraska, dated September 29, 2011, as amended, with accompanying and applicable Flood Insurance Rate Maps (FIRM), as amended, are hereby adopted by reference and declared to be a part of this Article.
3. The Flood Insurance Study reports and accompanying FIRMs are on file at the office of the Winnebago Tribal Environmental Protection Department. The best available information for flood hazard area identification as outlined in Section 7-1313(2) shall be the basis for regulation until a new or amended FIRM is issued which incorporates the data utilized under Section 7-1313(2). [TCR 11-29, 12-25]

7-1307 Penalties for non-compliance. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this Article and other applicable regulations. Violations of the provisions of this Article by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions), shall constitute an offense under Title 3 of the Winnebago Tribal Code. Any person who violates this Article or fails to comply with any of its requirements shall upon conviction thereof be fined not more than $500.00 or imprisoned for not more than 30 days, or both, for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the Administrator from taking such other lawful action as is necessary to prevent or remedy any violation. [TCR 11-29]

7-1308 Abrogation of greater restrictions. This Article is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Article and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail. [TCR 11-29]

7-1309 Interpretation. In the interpretation and application of this Article, all provisions shall be considered as minimum requirements and be liberally construed in favor of the Tribe. [TCR 11-29]

7-1310 Warning and disclaimer of liability. The degree of flood protection required by this Article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This Article does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This Article shall not create liability on the part of the Winnebago Tribe of Nebraska, any officer or employee thereof, for any flood damages that result from reliance on this Article or any administrative decision lawfully made hereunder. [TCR 11-29]

7-1311 Establishment of development permits.

1. Development permit required: A development permit shall be obtained before construction or development begins within any area of special flood hazard established in Section 7-1306. The permit shall be for all structures including manufactured homes, as set forth in the "Definitions," and for all development including fill and other activities, also as set forth in the "Definitions."

2. Application for development permit: Application for a development permit shall be made on forms furnished by the Administrator and may include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:
   Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures;
   a. Elevation in relation to mean sea level to which any structure has been floodproofed;
   b. Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in Section 7-1316(2); and
   c. Description of the extent to which a watercourse will be altered or relocated as a result of proposed development. [TCR 11-29]

7-1312 Administration. The Tribal Flood Plain Administrator ("Administrator") shall be responsible for administration and implementation of this Article in accordance with its provisions. [TCR 11-29]

7-1313 Duties and responsibilities of the Administrator. Duties of the Tribal Flood Plain Administrator shall include, but not be limited to:

1. Permit Review:
   a. Review all development permits to determine that the permit requirements of this Article have been satisfied;
   b. Review all development permits to determine that all necessary permits have been obtained from those Federal agencies from which prior approval is required;
   c. Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of Section 7-1318(1) are met.
2. Use of other base flood data: When base flood elevation data has not been provided in accordance with Section 7-1306, basis for establishing the area of special flood hazard, the Administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State or other source, in order to administer Sections 7-1316, Specific standards for flood hazard reduction, and 7-1318 Floodways.
3. Information to be obtained and maintained:
   a. Where base flood elevation data is provided through the Flood Insurance Study or required as in Section 2, obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
   b. For all new or substantially improved floodproofed structures where the base flood elevation data is provided through the Flood Insurance Study or as required in Section 2:
      i. verify and record the actual elevation (in relation to mean sea level), and
      ii. maintain the flood proofing certifications required in Section 7-1311(2)(C).
   c. Maintain for public inspection all records pertaining to the provisions of this Article.
4. Alteration of watercourses:
   a. Notify adjacent communities prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.
   b. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.
5. Interpretation of FIRM boundaries: Make interpretations where needed, as to exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the

location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 7-1314. [TCR 11-29]

7-1314 Variance procedures.

1. Appeal Board
   a. The Appeal Board shall hear and decide appeals and requests for variances from the requirements of this Article. The Appeal Board shall be comprised of the Tribal Council.
   b. The Appeal Board shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Administrator in the enforcement or administration of this Article.
   c. Those aggrieved by the decision of the Administrator, or any taxpayer, may appeal such decision to the Appeal Board as provided herein.
   d. In passing upon such applications, the Appeal Board shall consider all technical evaluations, all relevant factors, standards specified in other sections of this Article, and:
      i. the danger that materials may be swept onto other lands to the injury of others;
      ii. the danger to life and property due to flooding or erosion damage;
      iii. the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
      iv. the importance of the services provided by the proposed facility to the community;
      v. the necessity to the facility of a waterfront location, where applicable;
      vi. the availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
      vii. the compatibility of the proposed use with existing and anticipated development;
      viii. the relationship of the proposed use to the comprehensive plan and flood plain management program for that area;
      ix. the safety of access to the property in times of flood for ordinary and emergency vehicles;
      x. the expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
      xi. the costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
   e. Upon consideration of the factors of Section 1.D. and the purposes of this Article, the Tribal Council may attach such conditions to the granting of variances as it deems necessary to further the purposes of this Article.
   f. The Administrator shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administration upon request.
2. Conditions for variances
   a. Generally, the only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (i-xi) in Section 7-1314.D. have been fully considered. As the lot size increases, the technical justification required for issuing the variance increases.
   b. Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places without regard to the procedures set forth in this Section.

c. Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.

d. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

e. Variances shall only be issued upon:

i. a showing of good and sufficient cause;

ii. a determination that failure to grant the variance would result in exceptional hardship to the applicant;

iii. a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.

f. Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece or property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.

g. Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria except Section 7-1314(2)(A), and otherwise complies with Sections 7-1315(1) and (2) of the General standards for flood hazard reduction.

h. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. [TCR 11-29]

7-1315 General standards for flood hazard reduction. In all areas of special flood hazards, the following standards are required:

1. Anchoring

a. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.

b. All manufactured homes must likewise be anchored to prevent flotation, collapse, or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (Reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques).

2. Construction Materials and Methods

a. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

b. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

c. Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

3. Utilities

a. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

b. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters.

c. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

4. Subdivision Proposals

a. All subdivision proposals shall be consistent with the need to minimize flood damage.

b. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage.

c. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.

d. Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least 50 lots or 5 acres (whichever is less).

5. Review of Building Permits: Where elevation data is not available either through the Flood Insurance Study or from another authoritative source (Section 7-1313(2)), applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two feet above grade in these zones may result in higher insurance rates. [TCR 11-29]

7-1316 Specific standards for flood hazard reduction. In all areas of special flood hazards where base flood elevation data has been provided as set forth in Section 7-1306, Basis for Establishing the Areas of Special Flood Hazard or Section 7-1313(2), Use of Other Base Flood Data, the following provisions are required:

1. Residential Construction

a. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated one foot above the base flood elevation.

b. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must be either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

i. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.

ii. The bottom of all openings shall be no higher than one foot above grade.

iii. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

2. Nonresidential Construction: New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated one foot above the base flood elevation; or, together with attendant utility and sanitary facilities, shall:

a. Be floodproofed so that below one foot above the base flood level the structure is watertight with walls substantially impermeable to the passage of water.

b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

c. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural

design, specifications and plans. Such certifications shall be provided to the official as set forth in Section 7-1313(3)(B).

d. Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in Section 7-1316(1)(B).

e. Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g. a building floodproofed to the base flood level will be rated as one foot below.

3. Manufactured Homes

a. All manufactured homes to be placed or substantially improved on sites:

i. Outside of a manufactured home park or subdivision;

ii. In a new manufactured home park or subdivision;

iii. In an expansion to an existing manufactured home park or subdivision; or

iv. In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood; shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated one foot above the base flood elevation and be securely anchored to an adequately designed foundation system to resist flotation, collapse and lateral movement.

b. Manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or that are not subject to the above manufactured home provisions be elevated so that either:

i. The lowest floor of the manufactured home is elevated one foot above the base flood elevation, or

ii. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately designed foundation system to resist flotation, collapse, and lateral movement.

4. Recreational Vehicles: Recreational vehicles placed on sites are required to either:

a. Be on the site for fewer than 180 consecutive days;

b. Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or

c. Meet the requirements of Section 7-1316(3) above and the elevation and anchoring requirements for manufactured homes. [TCR 11-29]

7-1317 Before regulatory floodway. In areas where a regulatory floodway has not been designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zone AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community. [TCR 11-29]

7-1318 Floodways. Located within areas of special flood hazard established in Section 7-1306 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

1. Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional engineer is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering

practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

2. If Section 7-1318(1) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Sections 7-1315 through 1318. [TCR 11-29]

7-1319 Critical Facility. Construction of new critical facilities shall be, to the extent possible, located outside the limits of the Special Flood Hazard Area (SFHA) (100-year floodplain). Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated three feet or more above the level of the base flood elevation (100-year) at the site. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into flood waters. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible. [TCR 11-29]

TITLE 7
ARTICLE 14
WINNEBAGO POLLUTION CONTROL CODE

7-1400 Citation.
7-1401 Definitions.
7-1402 Pollution emissions and abatement.
7-1402.1 Abatement required.
7-1403 Exemption.
7-1404 Use of notification.
7-1405 Notification and approval of potential emission facility.
7-1406 Livestock feedlots.
7-1407 Cause of action for abandonment of hazardous waste on property of another.
7-1408 Livestock odor.
7-1409 Authority to issue penalty orders.
7-1410 Amount of penalty; considerations.
7-1411 Corrective order.
7-1412 Definitions.
7-1413 PCB: prohibited use.
7-1414 Definitions.
7-1415 Exemptions.
7-1416 Monitoring.
7-1417 Contents labeled.
7-1418 Environmental protection requirements.

7-1400 Citation. This Article may be cited as the Winnebago Pollution Control Code of 1998.

7-1401 Definitions.

1. "Air contaminant," "air contamination." Air contaminant or air contamination means the presence in the outdoor atmosphere of any dust, fume, mist, smoke, vapor, gas, or other gaseous, fluid, or particulate substance differing in composition from or exceeding in concentration the natural components of the atmosphere.
2. "Air pollution" means the presence in the outdoor atmosphere of any air contaminant or combination thereof in such quantity, of such nature and duration, and under such conditions as would be injurious to human health or welfare, to animal or plant life, or to property, or to interfere unreasonably with the enjoyment of life or property.
3. "Emission" means a release or discharge outside a man-made enclosed facility of any air, water, or land contaminant, solid or hazardous waste, land pollution water pollution, or air pollution, or any combination thereof/
4. "Emission facility" means any structure, work, equipment, machinery, device, apparatus, or other means whereby an emission is caused to occur.
5. "Hazardous waste" means any refuse, sludge, or other waste material or combinations of refuse, sludge or other waste materials in solid, semisolid, liquid, or contained gaseous form which because of its quantity, concentration, or chemical, physical, or infectious characteristics may (a) cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or (b) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. Categories of hazardous waste materials include, but are not limited to: explosives, flammables, oxidizers, poisons, irritants, and corrosives. Hazardous waste does not include source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended.
6. "Land pollution" means the presence in or on the land of any waste in such quantity, of such nature and duration, and under such condition as would affect injuriously any waters of the state, create air contaminants or cause air pollution.
7. "Noise" means any sound not occurring in the natural environment, including, but not limited to, sounds emanating from aircraft and highways, and industrial, commercial, and residential sources.

8. "Noise pollution" means the presence in the outdoor atmosphere of any noise or combination of noises in such quantity, at such levels, of such nature and duration or under such conditions as could potentially be injurious to human health or welfare, to animal or plant life, or to property, or could interfere unreasonably with the enjoyment of life or property.
9. "Person" means any human being, any municipality or other governmental or political subdivision or other public agency, any public or private corporation, any partnership, firm, association, or other organization, any receiver, trustee, assignee, agent, or other legal representative of any of the foregoing, or any other legal entity.
10. "Potential emission facility" or "storage facility" means any structure, work, equipment, device, apparatus, tank, container, or other means for the storage or confinement, either stationary or in transit, of any substance which, if released or discharged from such structure, work equipment, device, apparatus, tank, container, or other means of storage, might cause air pollution endangering human health, air pollution damaging property, obnoxious odors constituting a public nuisance, water pollution endangering human health, water pollution damaging property, land pollution endangering human health or land pollution damaging property.
11. "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial waste water treatment plant, water supply treatment plant, or air contaminant treatment facility, or any other waste having similar characteristics and effects.
12. "Solid waste" means garbage, refuse, sludge from a water supply treatment plant or air contaminant treatment facility, and other discarded waste materials and sludges, in solid, semisolid, liquid, or contained gaseous form, resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include hazardous waste; earthen fill, boulders, rock; sewage sludge; solid or dissolved material in domestic sewage or other common pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste water effluents or discharges which are point sources subject to permits under section 402 of the federal Water Pollution Control Act, as amended, dissolved materials in irrigation return flows; or source, special nuclear, or by-product material as defined by The Atomic Energy Act of 1954, as amended.
13. "Water contaminant" means garbage, refuse, sludge from a water supply treatment plant or air contaminant treatment facility, and other discarded waste materials and sludges, in solid, semisolid, liquid, or contained gaseous form, resulting from industrial, commercial, mining, and agricultural operations, and from community activities, or particulate substance differing in composition from or exceeding in concentration the natural components of water but does not include hazardous waste; earthen fill, boulders, rock; sewage sludge; solid or dissolved material in domestic sewage or other common pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste water effluents or discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended, dissolved materials in irrigation return flows; or source, special nuclear, or by-product material as defined by The Atomic Energy Act of 1954, as amended.
14. "Water pollution" means the presence in an outdoor body of water of any size or in any underground spring, aquifer, well, or other underground body of water of any water contaminant or combination thereof in such quantity, of such nature and duration, and under such conditions as would be injurious to human health or welfare, to animal or plant life, or to property, or to interfere unreasonably with the enjoyment of life or property.

7-1402 Pollution emissions and abatement.

1. Emission notification required. A person who controls the source of an emission must notify the Winnebago Tribal Council immediately of excessive or abnormal unpermitted emissions that:
   a. may cause air pollution endangering human health;
   b. may cause air pollution damaging property;

c. cause obnoxious odors constituting a public nuisance;
d. may cause water pollution endangering human health;
e. may cause water pollution damaging property;
f. may cause land pollution endangering human health; or
g. may cause land pollution damaging property.

2. If a person who controls the source of an emission has knowledge of an event that has occurred and that will subsequently cause an emission described in paragraph (a), the person must notify the Winnebago Tribal Council when the event occurs.

7-1402.1 Abatement required. A person who is required to notify the Winnebago Tribal Council under Section 7-1401 must take immediate and reasonable steps to minimize the emissions or abate the emission and obnoxious odors caused by the emissions.

7-1403 Exemption. The following are exempt from the requirements of Sections 7-1401 and 7-1402:

1. emissions resulting from the activities of public fire services or law enforcement services;
2. emissions from motor vehicles;
3. emissions permitted under Section 7-1405.

7-1404 Use of notification. Any notice submitted under Section 7-1401 is not admissible in any proceeding as an admission of causation.

7-1405 Notification and approval of potential emission facility.

1. No person may operate a potential emissions facility within the exterior boundaries of the Winnebago Reservation without obtaining prior written permission of the Winnebago Tribal Council.
2. Any person who desires to obtain permission pursuant to Section 7-1405(a) to construct or operate a potential emissions facility must provide sufficient information, including but not limited to plans, designs, construction drawings, environmental assessments, blueprints, environmental permits, and pollution control plans, so that the Winnebago Tribal Council may determine whether it is in the best interests of the Tribe and Tribal members to allow the construction and operation of such facility on the reservation.
3. Any person who desires to obtain permission pursuant to Section 7-1405(a) to construct or operate a potential emissions facility shall first deposit with the Tribe an amount sufficient for an adequate independent environmental assessment of the proposed potential emissions facility. The amount of the deposit shall be determined by the Winnebago Tribal Council. Any sums remaining after payment for the assessment shall be refunded to the applicant.

7-1406 Livestock feedlots. Permit.

1. No person may operate a livestock feedlot with a capacity of 500 animal units or more without obtaining prior written permission of the Winnebago Tribal Council.
2. Notice of application for livestock feedlot permit. A person who applies to the Winnebago Tribal Council for a permit to construct or expand a feedlot with a capacity of 500 animal units or more shall, not later than ten business days after the application is submitted, provide notice to each resident and each owner of real property within 5,000 feet of the perimeter of the proposed feedlot. The notice may be delivered by first class mail, in person, or by the publication in a newspaper of general circulation within the affected area and must include information on the type of livestock and the proposed capacity of the feedlot.
3. A livestock feedlot with a capacity of 500 animal units is deemed a potential emissions facility.

7-1407 Cause of action for abandonment of hazardous waste on property of another.

1. If an owner of property on which containers of hazardous waste or material which is hazardous waste is abandoned by another disposes of the waste in compliance with all applicable laws and at the owner's expense, the property owner is entitled to recover from any person responsible for the waste that was abandoned damages of twice the costs incurred for removal, processing, and disposal of the waste, together with the costs and losses that result from the abandonment and Court costs. If, before the waste is properly disposed of, the property owner knows the identity and location of a person responsible for the waste that was abandoned, the property owner is not entitled to recover against that person under this Section unless:
   a. The property owner requests in writing that the person responsible for the waste that was abandoned remove and properly dispose of the abandoned waste and allows the responsible person 30 days after the request is mailed to remove the waste;
   b. The property owner allows the person responsible for the waste that was abandoned reasonable access to the owner's property to remove the waste within the 30-day period after giving the notice; and
   c. The person responsible for the waste that was abandoned fails to remove all of the waste within the 30-day period.
2. A person who is purchasing property on a contract for deed is a property owner for the purposes of this Section.

7-1408 Livestock odor. Any person owning, operating or managing any type of livestock facility with more than 200 animal units must:

1. Monitor and identify potential livestock facility violations of the generally accepted ambient air quality standards for hydrogen sulfide, using a protocol for responding to complaints regarding feedlot odor and its hydrogen sulfide component, including the appropriate use of portable monitoring equipment that enables monitoring staff to follow plumes;
2. When livestock production facilities are found to be in violation of generally accepted ambient hydrogen sulfide standards, take appropriate actions necessary to ensure compliance, utilizing appropriate technical assistance.

7-1409 Authority to issue penalty orders.

1. Any person may file a complaint with the General Counsel of the Winnebago Tribe of Nebraska for any violation of this Article. The General Counsel may initiate litigation in the Winnebago Tribal Court seeking any remedy allowed by this Article or allowed by any common law theory of liability.
2. The Winnebago Tribal Court, in addition to any remedy allowed by any other statutory provision, or any other remedy allowed by law, may issue an order requiring violations to be corrected and assessing monetary penalties for violations of this Title.

7-1410 Amount of penalty; considerations.

1. The Winnebago Tribal Court may issue an order assessing a penalty of not less than $100 nor more than up to $10,000 for each violation of this Article. For purposes of this Section, each month or portion thereof in which there is a violation constitutes a separate violation.
2. In determining the amount of a penalty the Winnebago Tribal Court may consider:
   a. the willfulness of the violation;
   b. the gravity of the violation, including damage to humans, animals, air, water, land, or other natural resources of the Tribe;

c. the history of past violations;
d. the number of violations;
e. the economic benefit gained by the person by allowing or committing the violation; and
f. other factors as justice may require, if the Winnebago Tribal Court specifically identifies the additional factors in the Court's order.

3. Contents of order. An order assessing a civil penalty under this Section shall include:
   a. a concise statement of the facts alleged to constitute a violation;
   b. a reference to the section of the statute that has been violated;
   c. a statement of the amount of the civil penalty to be imposed and the factors upon which the penalty is based; and
   d. a statement of the person's right to review of the order and appeal to the Winnebago Supreme Court.

7-1411 Corrective order.

1. In addition to the penalties in Section 7-1409, the Tribal Court may issue an order assessing requiring the violations cited in the order to be corrected within 30 calendar days from the date the order is received.
2. The person to whom the order was issued shall provide information to the Winnebago Tribal Court before the 31st day after the order was received demonstrating that the violation has been corrected or that appropriate steps toward correcting the violation have been taken. The Tribal Court shall determine whether the violation has been corrected and notify the person subject to the order of the Court's determination.

7-1412 Definitions. Applicability. For the purposes of Sections 7-1412 to 7-1413, the following terms have the meanings given:

1. "PCB" means the class of organic compounds known as polychlorinated biphenyls and includes any of several compounds produced by replacing one or more hydrogen atoms on the biphenyl molecule with chlorine. PCB does not include chlorinated biphenyl compounds that have functional groups attached other than chlorine.
2. "Person" has the meaning specified in Section 7-1401(i).

7-1413 PCB; prohibited use.

1. Certificate of exemption. No person shall use, possess, sell, purchase or manufacture PCB or any product containing PCB unless the use, possession, sale, purchase or manufacture of PCB or products containing PCB is specifically exempted after public hearing by the Winnebago Tribal Council.
2. Labels required. No person shall add PCB in the manufacture of any new item, product or material, nor shall any person sell any new item, product or material to which PCB has been added unless the PCB or products containing PCB are conspicuously labeled to disclose the presence of PCB and the concentrations of PCB.
3. Penalties. Violations of this Section and shall be subject to the provisions of Section 17-1409.

7-1414 Definitions. Scope. As used in Sections 7-1414 to 7-1420, the terms defined in this Section have the meanings given them.

1. "Aboveground storage tank" means any one or a combination of containers, vessels, and enclosures, including structures and appurtenances connected to them, that is used to contain or dispense regulated substances, and that is not an underground storage tank.

2. "Agency" means the pollution control agency.
3. "Installer" means a person who places, constructs, or repairs an aboveground or underground tank, or permanently takes an aboveground or underground tank out of service.
4. "Operator" means a person in control of, or having responsibility for, the daily operation of an underground storage tank.
5. "Owner" means a person who owns an underground storage tank and a person who owned it immediately before discontinuation of its use.
6. "Regulated substance" means:
   a. a hazardous material listed in Code of Federal Regulations, Title 49, section 172. 101; or
   b. petroleum, including crude oil or a fraction of crude oil that is liquid at a temperature of 60 degrees Fahrenheit and pressure of 14.7 pounds per square inch absolute.
7. "Release" means a spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into the environment.
8. "Underground storage tank" means any one or a combination of containers including tanks, vessels, enclosures, or structures and underground appurtenances connected to them, that is used to contain or dispense an accumulation of regulated substances and the volume of which, including the volume of the underground pipes connected to them, is ten percent or more beneath the surface of the ground.

7-1415 Exemptions. Sections 7-1416, 7-1417, and 7-1418 do not apply to:

1. Farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;
2. Tanks of 1, 100 gallons or less capacity used for storing heating oil for consumptive use on the premises where stored;
3. Pipeline facilities, including gathering lines, regulated under the Natural Gas Pipeline S, duty Act of 1968, United States Code, Title 49, chapter 24, or the Hazardous Liquid Pipeline Safety Act of 1979, United States Code, Title 49, chapter 29;
4. Surface impoundments, pits, ponds, or lagoons;
5. Storm water or waste water collection systems;
6. Flow-through process tanks;
7. Tanks located in an underground area, including basements, cellars, mineworkings, drifts, shafts, or tunnels, if the storage tank is located upon or above the surface of the floor;
8. Septic tanks;
9. Tanks used for storing liquids that are gaseous at atmospheric temperature and pressure.

7-1416 Monitoring.

1. By September 1, 1999, all above ground tanks of 2,000 gallons or more used for storage and subsequent resale of petroleum products must be equipped with:
   a. a gauge in working order that shows the current level of product in the tank; or
   b. an audible or visual alarm which alerts the person delivering fuel into the tank that the tank is within 100 gallons of capacity.
2. In lieu of the equipment specified in paragraph (a), the owner or operator of a tank may use a manual method of measurement which accurately determines the amount of product in the tank and the amount of capacity available to be used. This information must be readily available to anyone delivering fuel into the tank prior to delivery. Documentation that a tank has the available capacity for the amount of product to be delivered must be transmitted to the person making the delivery.

7-1417 Contents labeled.

1. By December 1, 1999, all aboveground tanks governed by this Section must be numbered and labeled as to the tank contents, total capacity, and capacity in volume increments of 500 gallons or less.
2. Piping connected to the tank must be labeled with the product carried at the point of delivery and at the tank inlet. Manifolded delivery points must have all valves labeled as to product distribution.

7-1418 Environmental protection requirements. A person may not install an underground storage tank unless the tank:

1. is installed according to requirements of the American Petroleum Institute Bulletin 1615 (November 1979) and all manufacturer's recommendations;
2. is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed in a manner to prevent the release of any stored substance;
3. is constructed to be compatible with the substance to be stored; and
4. is constructed and installed in a manner conforming with Environmental Protection Agency guidelines and regulations.

TITLE 7
ARTICLE 15
LANDLORD TENANT RELATIONS
(As adopted February 1, 2010)

7-1501	Applicability.	7-1507	Termination.
7-1502	Definitions.	7-1508	Rights and Obligations of Landlord.
7-1503	Rental Agreement.	7-1509	The Rights and Obligations of Tenant.
7-1504	Security Deposit.	7-1510	Landlord Remedies.
7-1505	Eviction for Possession of a Controlled Substance.	7-1511	Tenant Remedies.
		7-1512	Notification.
7-1506	Utilities and Waste Disposal.	7-1513	Winnebago Tribal Housing Committee.

7-1501 Applicability. This Article shall govern relationships between landlords and tenants as defined in this Article on the lands of the Winnebago Tribe of Nebraska Reservation and over all property within the Winnebago Tribe of Nebraska Reservation whether private or public real property. This includes relations between the Winnebago Tribal Housing Program and its tenants. This Article shall apply only to residential property. [TCR 10-53]

7-1502 Definitions.

1. "Abandonment" means that the tenant vacates the dwelling without providing the notice required pursuant to the rental agreement ***or any actions or absence of the tenant from the dwelling that manifests the tenant's intention to no longer occupy the dwelling.***
2. "Code" means the Winnebago Tribal Code.
3. "Controlled substance" shall have the same meaning as in Winnebago Tribal Code Section 3-801(4).
4. "Forcible entry and detainer" means a suit brought in the Tribal Court pursuant to Title 2, Article 13 of the Winnebago Tribal Code to terminate a tenant's interest in real property and/or to evict any person from occupancy of real property and return possession of the same to the landlord/lessor. Such a suit may also demand money damages for rent owed and damage to the landlord's property.
5. "Lessee" or "tenant" means any person who occupies real property under a rental agreement or other agreement with a lessor for the purpose of maintaining a residence, as defined in this Article.
6. "Lessor" or "landlord" means a person or entity, including the Winnebago Tribal Housing Program, who has an interest in real property which for a limited time has been leased or rented to another for the purpose of maintaining a residence.
7. "Nuisance" means the creation or maintenance on real property of a condition or the performance of an act which:
   a. Unreasonably threatens the health or safety of other tenants, their guests, neighboring land users or the public generally; or
   b. unreasonably and substantially interferes with the ability of other tenants or neighboring property users to enjoy the reasonable use and occupancy of their tenancy or property.
8. "Rental agreement" means any agreement, written, oral or by practice of the parties pursuant to which the tenant uses or occupies the real property of the lessor as a residence. If such agreement is written, any separately stated written rules or terms and conditions of use and occupancy referenced in the agreement shall be considered part of the "rental agreement."

9. "Tribal Court" means the Winnebago Tribal Court as established by the laws of the Tribe or other entity as may now or hereafter be authorized by the laws of the Tribe to exercise the powers and functions of a court of law.
10. "Tribe" means the Winnebago Tribe of Nebraska.
11. "Waste" means spoilage or destruction of land, buildings, gardens, trees or other improvements owned by a lessor and committed by a tenant or a tenant's guest which result in economic injury to the lessor's interest in the property. [TCR 10-53]

7-1503 Rental Agreement. The rental agreement shall be the primary source of rights and obligations between the landlord and the tenant. All terms of the rental agreement shall be enforceable through the appropriate action brought in the Tribal Court to the extent that the terms do not contradict the provisions of this Article. [TCR 10-53]

7-1504 Security Deposit. A rental agreement may require a tenant to provide a security deposit to landlord to offset damages to landlord's property caused by tenant or his guests and to cover unpaid rent under the rental agreement. A rental agreement may not provide for a security deposit in excess of one and one-half months' rent as provided for in the rental agreement. [TCR 10-53]

7-1505 Eviction for Possession of a Controlled Substance. A provision in a rental agreement for the eviction of a tenant found to be in possession of, using, selling, or distributing a controlled substance shall be fully enforceable. [TCR 10-53]

7-1506 Utilities and Waste Disposal. Which party to the rental agreement shall be responsible for payment of utilities and waste disposal shall be determined solely by agreement of the parties. [TCR 10-53]

7-1507 Termination. A rental agreement may provide for a specified term of occupancy and procedures for termination. A rental agreement that provides for a specified term of occupancy by the tenant shall become a month-to-month tenancy upon expiration of the specified term. Unless otherwise stated in a lease agreement, a month-to-month tenancy is terminable by either party upon thirty (30) days notice to the other. Where the rental agreement does not provide for a specified term, the tenancy shall be month-to-month and subject to termination by either party upon thirty (30) days notice to the other. [TCR 10-53]

7-1508 Rights and Obligations of Landlord.

1. Landlord Rights
   a. To be paid rent or money due under the rental agreement as provided for therein.
   b. To adopt rules and regulations for the use and occupancy of a dwelling which are designed to promote the convenience, safety or welfare of occupants, preserve the property from waste or improper use, make a fair distribution or use of services and facilities for those who occupy dwellings or otherwise preserve the peace and quiet enjoyment of other tenants.
   c. To have access to the dwelling at reasonable time of day for maintenance, repairs, decoration, alteration or improvements, to inspect the premises, supply necessary or agreed to services, or to show the dwelling perspective tenants after a notice to vacate has been served.
   d. Upon an abandonment of a Winnebago Tribal Housing property, the Winnebago Tribal Housing Program shall have the right to seize whatever property of the tenant or other occupant that remains in the dwelling. If rent or costs incurred to repair damages remain outstanding after the tenant's security deposit is applied, the tenant fails to pay all outstanding amounts owed and does not claim his/her property within thirty (30) days,

the Winnebago Tribal Housing Program may sell the property to cover outstanding rent owed or damages to the property that occurred during the tenant's occupancy of the dwelling. Any proceeds collected from the sale of property under this Section shall be the property of Winnebago Tribal Housing.

2. Landlord Obligations
   a. The landlord has a duty to maintain dwellings in a condition fit for human occupancy, including, but not limited to:
      i. maintaining safe heating equipment that heats the entire dwelling;
      ii. maintaining all foundations, floors, walls, windows, door, ceilings, and roofs in a reasonably weatherproof, water tight and rodent proof condition;
      iii. maintaining plumbing systems, including the provision of a reasonable amount of hot water;
      iv. maintaining all electrical systems;
      v. if the dwelling has an air conditioning unit provided by the landlord, then the landlord is responsible for maintenance of the air conditioning unit. However, the landlord has no obligation to provide an air conditioning unit.
   b. Upon delivery of the dwelling to the tenant, the landlord must ensure that the dwelling is clean and sanitary and reasonably free from rodents or insect infestation.
   c. Landlord shall provide twenty-four (24) hours notice to tenant before entering the dwelling as provided for in Section 7-1508(a)(3). Emergency circumstances may allow the landlord to access a dwelling without notice. Additionally, a landlord may provide standing notice to tenants of regularly scheduled maintenance.
   d. The landlord has the duty to defend tenant's right to occupancy under the lease against third parties. [TCR 10-53]

7-1509 The Rights and Obligations of Tenant.

1. Tenant Rights
   a. Each of landlord's obligations as set forth in Section 7-1508(b) creates a reciprocal right in the tenant.
2. Tenant Obligations
   a. To pay rent as provided for in the rental agreement.
   b. To abide by reasonable rules and terms and conditions of use and occupancy as provided for in the rental agreement.
   c. To notify landlord of damage or disrepair to the dwelling in a timely fashion. For purposes of this Section, "timely" shall be determined by the need for repair to avoid further damage or waste to the property or to protect the health or safety of the tenant or other persons.
   d. The tenant may not sublease or otherwise assign his interest in the dwelling unless specifically allowed to do so by the rental agreement or by the written permission of the landlord. No third party may use a purported sublease or assign from a tenant as a defense in an action brought by the landlord for possession of the dwelling unless such sublease or assign is allowed as provided for in this Section. [TCR 10-53]

7-1510 Landlord Remedies.

1. A landlord's remedies are enforced by bringing an action for forcible entry and detainer pursuant to the Code Title 2, Article 13.
2. Grounds for Eviction of Tenant and Repossession of the Property by Landlord:
   a. Failure to pay rent as provided for in the rental agreement. Upon tenant's first such failure, landlord must provide notice to the tenant and allow the tenant at least five (5) days from the date of the notice to cure the non-payment before bringing a forcible entry

and detainer action. Upon subsequent failures, landlord may immediately bring a forcible entry and detainer action without notice to tenant or an opportunity to cure.

b. Breach of rental agreement. Upon tenant's first such breach, landlord must provide notice to the tenant and allow the tenant at least three (3) days from the date of the notice to cure the breach before bringing a forcible entry and detainer action. Upon any subsequent breach during the tenancy, landlord may immediately bring a forcible entry and detainer action without notice to tenant or an opportunity to cure.

c. Violation of this Act. Upon tenant's first such violation, landlord must provide notice to the tenant and allow the tenant at least three (3) days from the date of the notice to cure the violation before bringing a forcible entry and detainer action. Upon any subsequent violation during the tenancy, landlord may immediately bring a forcible entry and detainer action without notice to tenant or an opportunity to cure.

d. Creating or maintaining a nuisance. Before bringing an unlawful detainer action, the landlord must provide notice to the tenant and allow at least three (3) days from the date of the notice for the tenant to cure any nuisance created or maintained by the tenant before bringing a forcible entry and detainer action. No notice or period to cure need be provided where:

i. notice and period to cure has already been provided for the same type of nuisance on a prior occasion during the previous twelve (12) months;

ii. notice and period to cure has already been provided on any two other nuisances during the previous twelve (12) months;

iii. the nuisance creates a substantial risk of death or serious bodily injury to any person;

iv. the nuisance involves the possession, consumption, sale or distribution of a controlled substance.

e. Holdover. Where a tenant remains in possession of a dwelling after the tenancy has terminated pursuant to Section 7-1507, the tenant shall be deemed a trespasser on the property and shall be subject to immediate removal by the proper law enforcement authority and subject to prosecution for trespass.

f. Abandonment. Where a tenant has abandoned the dwelling, the landlord may immediately bring a forcible entry and detainer action for ejectment of the tenant in possession of the dwelling.

3. Money Damages. Landlord may seek money damages in any action for forcible entry and detainer for outstanding rent owed or damages to landlord's property caused by tenant or tenant's guests. [TCR 10-53]

7-1511 Tenant Remedies.

1. Condition of Property. Where the landlord fails to meet his obligations pursuant to Section 7-1508(b)(1) & (2) of this Article, the tenant may withhold from rent the amount of money required to make the dwelling fit for human occupancy or to clean and sanitize the dwelling upon initial delivery by the landlord or cure any rodent or insect infestation. The tenant must provide notice to the landlord and allow the landlord five (5) days to cure the failure to meet the obligation. Where the landlord's failure to meet the obligation creates an unsafe or unsanitary condition, or otherwise renders the dwelling uninhabitable, the tenant only need allow forty eight (48) hours for the landlord to cure before taking action to correct the condition.

2. Failure to Provide Notice. Where the landlord fails to meet his obligation pursuant to Section 7-1508(b)(3) of this Article, landlord shall be liable to tenant in the amount of $100.00 for the first such violation and $200.00 for each subsequent violation during the tenant's occupancy of the dwelling. Tenant may withhold the amount from rent owed or bring an action in Tribal Court to collect the damages. The penalties provided for in this subsection shall not apply to the Tribe, including the Winnebago Tribal Housing Program.

3. Right to Occupancy. Where landlord fails to meet his obligation pursuant to Section 7-1508(b)(4) and the tenant incurs legal fees or costs to protect his right to occupy the property, the landlord is liable for the tenant's legal fees incurred. The amount of attorney fees incurred by tenant in defending his/her right to occupy the property may be withheld by tenant from rent owed. Attorney fees collectable by tenant pursuant to this Section shall not exceed the total amount of money still owed by the tenant to the landlord pursuant to the rental agreement. Where the tenancy is month-to-month, the total amount recoverable shall not exceed one month's rent. The Tribe, including the Winnebago Tribal Housing Program, shall not be liable for attorney fees under this subsection.
4. Cause of Action. Should the balance of rent owed by the tenant be insufficient to fully offset any money owed to tenant by landlord pursuant to this Section, tenant shall have a cause of action against landlord to collect the money owed. Nothing in this Section shall be deemed to be a waiver of the Tribe's or any Tribal entity's sovereign immunity from suit. [TCR 10-53]

7-1512 Notification.

1. To Tenant. When landlord is required to provide a notification to tenant under this Article, the notification shall:

    a. be in writing;
    b. specify which section of the rental agreement or this Article that the tenant is violating or the time at which landlord will be entering the residence, such as the case may be;
    c. provide what action must be taken to correct the violation or the purpose of landlord's entry into the residence, such as the case may be;
    d. provide the time in which the correction of a violation must occur before legal action may be taken;
    e. be posted on front door to tenant's dwelling ***or at a common entrance to a multi-dwelling building.***
2. To Landlord. When tenant is required to provide notice to landlord under this Article, the notification shall:
    a. be in writing;
    b. generally set forth tenant's grievance and requested relief;
    c. be presented to the same place and person to which tenant remits rent under the rental agreement.

Landlord may require that requests for repairs be submitted on a form provided to tenant by landlord. [TCR 10-53]

7-1513 Winnebago Tribal Housing Committee.

1. There is hereby created the Winnebago Tribal Housing Committee. The Committee members shall be appointed by the Tribal Council in accordance with Bylaws approved by the Tribal Council.
2. The members of the Committee shall be appointed by the Tribal Council. Subject to approval by the Tribal Council, the Committee shall adopt Bylaws as appropriate to fulfill its duties set forth in this Article. Where the Winnebago Tribal Housing Committee Bylaws are inconsistent with this Article, this Article shall control.
3. The Winnebago Tribal Housing Committee shall be an informal forum for tenants of the Winnebago Tribal Housing Program to address concerns about their residence and public areas of Winnebago Tribal Housing Program properties. The Winnebago Tribal Housing Committee may make recommendations to the Winnebago Tribal Housing Program to address tenant concerns.

4. Upon a tenant's request, the Winnebago Tribal Housing Committee may also review lease or Winnebago Tribal Housing Program rule violations assessed against a tenant to ensure that an assessed lease or rule violation is supported by articulated, objective and documented facts. Any tenant request made under this Section must be delivered in writing to the Winnebago Tribal Housing Committee no later than forty-eight (48) hours after the Winnebago Tribal Housing Program provides notice to the tenant of the assessed violation and must include any written documentation that the tenant wishes the Winnebago Tribal Housing Committee to consider. The Winnebago Tribal Housing Committee shall determine whether the assessed violation is based upon articulated, objective and documented facts and submit its decision and basis for its decision in writing to the Winnebago Tribal Housing Program within five (5) days of having received the tenant's request for review. The Winnebago Tribal Housing Program shall accept the Winnebago Tribal Housing Committee decision regarding lease or rule violations and take appropriate action in accordance with such decision.
5. Any submission by the Winnebago Tribal Housing Committee shall not act to stay a proceeding brought by the Winnebago Tribal Housing Program in the Tribal Court based upon the alleged violation or accumulated violations by the tenant. However, if the Winnebago Tribal Housing Program rescinds the subject violation upon reconsideration and that violation was a necessary element of the cause then under consideration in the Tribal Court, the Winnebago Tribal Housing Program shall move to dismiss the Tribal Court action. The tenant may also file the appropriate motion seeking dismissal based upon the rescinded violation. Additionally, if a tenant has already been removed from possession of a dwelling and the Winnebago Tribal Housing Program later rescinds the violation that was the basis for removal of the tenant, the Winnebago Tribal Housing Program shall take all practical action to reinstate the removed tenant. The Winnebago Tribal Housing Program shall not be liable for any damages based upon a rescinded violation.
6. The Winnebago Tribal Housing Committee shall meet once a month at a location on the Winnebago Reservation. This meeting shall be open to all Winnebago Tribal Housing Program tenants. The time and place of the meeting shall be provided to Winnebago Tribal Housing Program tenants by posting a notice in a public place at each of the Winnebago Tribal Housing Program's properties no less than forty-eight (48) hours before the meeting. The Winnebago Tribal Housing Committee is not a public entity, and its meetings may be closed to the general public.
7. Decisions of the Winnebago Tribal Housing Program shall only be appealable to the Winnebago Tribal Court. Appeals to the Winnebago Tribal Court shall be *de novo*. [TCR 10-53]

TITLE 7
ARTICLE 16
SEX OFFENDER REGISTRATION
(Adopted May 25, 2011)

7-1601 Citation.
7-1602 Purpose and Legislative Intent.
7-1603 Effective Date.
7-1604 Construction of rules.
7-1605 References to federal law incorporated.
7-1606 Creation of Sex Offender Registry.
7-1607 Creation of public Sex Offender Registry website.
7-1608 Cooperative Agreement with the State of Nebraska permitted.
7-1609 Definitions.
7-1610 Covered offenses.
7-1611 Tier 1 offenses; sex offenses.
7-1612 Tier 1 offenses; offenses involving minors.
7-1613 Tier 1 offenses; certain tribal offenses.
7-1614 Tier 1 offenses; certain federal offenses.
7-1615 Tier 1 offenses; certain military offenses.
7-1616 Tier 2 offenses; recidivism and felonies.
7-1617 Tier 2 offenses; offenses involving minors.
7-1618 Tier 2 offenses; certain tribal offenses.
7-1619 Tier 2 offenses; certain federal offenses.
7-1620 Tier 2 offenses; certain military offenses.
7-1621 Tier 3 offenses; recidivism and felonies.
7-1622 Tier 3 offenses; general offenses.
7-1623 Tier 3 offenses; certain tribal offenses.
7-1624 Tier 3 offenses; certain federal offenses.
7-1625 Tier 3 offenses; certain military offenses.
7-1626 Required information; general requirements.
7-1627 Criminal history.
7-1628 Date of Birth.
7-1629 DNA sample.
7-1630 Driver's licenses, identification cards, passports, and immigration documents.
7-1631 Employment information.
7-1632 Finger and palm prints.
7-1633 Internet identifiers.
7-1634 Name.
7-1635 Offense Information.
7-1636 Phone numbers.
7-1637 Picture.
7-1638 Physical description.
7-1639 Professional licensing information.
7-1640 Residence address.
7-1641 School.
7-1642 Social Security Number.
7-1643 Temporary lodging.
7-1644 Vehicle information.
7-1645 Frequency.
7-1646 Reduction of registration periods.
7-1647 Clean record.
7-1648 Requirements for in person appearances.
7-1649 Where registration is required; jurisdiction of conviction.
7-1650 Where registration is required; jurisdiction of incarceration.
7-1651 Where registration is required; jurisdiction of residence.
7-1652 Where registration is required; jurisdiction of employment.
7-1653 Where registration is required; jurisdiction of school attendance.
7-1654 Where registration is required; jurisdiction of where may be found.
7-1655 Timing of registration; timeframe.
7-1656 Timing of registration; duties of Chief of Police.
7-1657 Retroactive registration.
7-1658 Timing of recapture.
7-1659 Keeping registration current; jurisdiction of residency.
7-1660 Keeping registration current; jurisdiction of school attendance.
7-1661 Keeping registration current; jurisdiction of employment.
7-1662 Keeping registration current; duties of Chief of Police.
7-1663 Failure to appear for registration and absconding; failure to appear.
7-1664 Failure to appear for registration and absconding; absconded sex offenders.
7-1665 Failure to appear for registration and absconding; failure to register.
7-1666 Website.
7-1667 Dru Sjodin National Sex Offender Public Website.
7-1668 Required website information.
7-1669 Prohibited website information.
7-1670 Witness protection.
7-1671 Law enforcement notification.

TITLE 7
ARTICLE 16
SEX OFFENDER REGISTRATION
(Adopted May 25, 2011)
(continued)

7-1672 Community notification.
7-1673 No waiver of immunity.
7-1674 Good faith.
7-1675 Violation; criminal offense.
7-1676 Violation; civil penalty.
7-1677 Hindrance of sex offender registration; criminal offense.
7-1678 Hindrance of sex offender registration; civil penalty.

7-1601 Citation. This Article shall be known and may be cited as the Sex Offender Registration Act. [TCR 11-124]

7-1602 Purpose and Legislative Intent. The intent of this Act is to implement the federal Sex Offender Registration and Notification Act (SORNA) (Title I of Public Law 109-248) and shall be interpreted liberally to comply with the terms and conditions of SORNA as presently written or hereafter amended. [TCR 11-124]

7-1603 Effective Date. This Article shall supersede all previously enacted Tribal laws relating to Sex Offender registration. This Article shall become effective thirty (30) days from the date it is adopted by the Winnebago Tribal Council. [TCR 11-124]

7-1604 Construction of rules. The provisions of the Sex Offender Registration Act shall be so interpreted and construed as to effectuate their general purpose to make uniform the laws relating to SORNA. [TCR 11-124]

7-1605 References to federal law incorporated. Any references in this Article to federal law are hereby incorporated by reference to include the law of the Winnebago Tribe. [TCR 11-124]

7-1606 Creation of Sex Offender Registry. There is hereby established a sex offender registry, which the Chief of Police, or his designee, shall maintain and operate pursuant to the provisions of this Act, as amended. The Chief of Police shall be authorized to develop policies and procedures necessary to implement this Article. [TCR 11-124]

7-1607 Creation of public Sex Offender Registry website. There is hereby established a public sex offender registry website, which the Chief of Police or designee shall maintain and operate pursuant to the provisions of this Act, as amended. [TCR 11-124]

7-1608 Cooperative Agreement with the State of Nebraska permitted. The Chief of Police is permitted, upon approval by resolution of the Tribal Council, to enter into a Cooperative Agreement with the State of Nebraska as permitted under SORNA (§ 127(b)) to fully implement and comply with the terms of SORNA and the laws of the Winnebago Tribe of Nebraska as presently written or hereafter amended. [TCR 11-124]

7-1609 Definitions. Where a term is not defined in this Section, it shall be given its ordinary meaning, unless otherwise defined in the Winnebago Tribal Code, Title 7. The Definitions below apply to this Article only.

1. "Convicted"
   a. An adult sex offender is "convicted" for the purposes of this Article if the sex offender has been subjected to penal consequences based on the conviction, however the conviction may be styled.
   b. A juvenile offender is "convicted" for purposes of this Article if the juvenile offender is either:
      i. Prosecuted and found guilty as an adult for a sex offense; or
      ii. Is adjudicated delinquent as a juvenile for a sex offense, but only if the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse (as described in either (a) or (b) of Section 2241 of Title 18, United States Code), or was an attempt or conspiracy to commit such an offense.
2. "Foreign Convictions." A foreign conviction is one obtained outside of the United States.
3. "Employee." The term "employee" as used in this Article includes, but is not limited to, an individual who is self-employed or works for any other entity, regardless of compensation. Volunteers of a tribal agency or organization are included within the definition of employee for registration purposes.
4. "Immediate." "Immediate" and "immediately" mean within three (3) business days.
5. "Imprisonment." The term "imprisonment" refers to incarceration pursuant to a conviction, regardless of the nature of the institution in which the offender serves the sentence. The term is to be interpreted broadly to include, for example, confinement in a state "prison" as well as in a federal, military, foreign, BIA, private or contract facility, or a local or tribal "jail." Persons under "house arrest" following conviction of a covered sex offense are required to register pursuant to the provisions of this Act during their period of "house arrest."
6. "Jurisdiction." The term "jurisdiction" as used in this Article refers to the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, and any Indian tribe.
7. "Minor." The term "minor" means an individual who has not attained the age of 18 years.
8. "Resides." The term "reside" or "resides"' means, with respect to an individual, the location of the individual's home or other place where the individual habitually lives or sleeps.
   a. Notwithstanding the definition in Section 7-1609 (8) above, an individual who sleeps or lives within the Reservation for fourteen (14) days or more shall be deemed to reside within the Reservation.
9. "Sex Offense." The term "sex offense" as used in this Article means:
   a. A criminal offense that has an element involving a sexual act or sexual contact with another;
   b. A criminal offense that is a "specified offense against a minor." The term "specified offense against a minor" means an offense against a minor that involves any of the following:
      i. An offense (unless committed by a parent or guardian) involving kidnapping.
      ii. An offense (unless committed by a parent or guardian) involving false imprisonment.
      iii. Solicitation to engage in sexual conduct.
      iv. Use in a sexual performance.
      v. Solicitation to practice prostitution.
      vi. Video voyeurism as described in 18 U.S.C. § 1801.
      vii. Possession, production, or distribution of child pornography.
      viii. Criminal sexual conduct involving a minor, or the use of the Internet to facilitate or attempt such conduct.
      ix. Any conduct that by its nature is a sex offense against a minor.

c. A Federal offense (including an offense prosecuted under Section 1152 or 1153 of Title 18 of the United States Code) under Section 1591, or chapter 109A, 110 (other than Section 2257, 2257A, or 2258), or 117 of Title 18 of the United States Code;

d. A military offense specified by the Secretary of Defense under Section 115(a)(8)(C)(i) of Public Law 105-119 (10 U.S.C. 951 note); or

e. An attempt or conspiracy to commit an offense described in clauses (a) through (d).

f. An offense involving consensual sexual conduct is not a sex offense for the purposes of this Article if the victim was an adult, unless the adult was under the custodial authority of the offender at the time of the offense, or if the victim was at least thirteen (13) years old and the offender was not more than four (4) years older than the victim.

g. A foreign conviction is not a sex offense for the purposes of this Article unless it was either:

i. obtained under the laws of Canada, the United Kingdom, Australia, New Zealand, or

ii. under the laws of any foreign country when the United States State Department in its Country Reports on Human Rights Practices has concluded that an independent judiciary generally or vigorously enforced the right to a fair trial in that country during the year in which the conviction occurred.

10. "Sex Offender." A person convicted of a sex offense is a "sex offender."

11. "Sexual Act." The term "sexual act" means:

a. contact between the penis and the vulva or the penis and the anus, and for purposes of this definition contact involving the penis occurs upon penetration, however slight;

b. contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;

c. the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or

d. the intentional touching, not through the clothing, of the genitalia of another person that has not attained the age of 18 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

12. "Sexual Contact." The intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desires of another person.

13. "Student." A "student" is a person who enrolls in or attends either a private or public education institution, including a secondary school, trade or professional school, or an institution of higher education.

14. "SORNA." The Sex Offender Registration and Notification Act (Title I of the Adam Walsh Child Protection and Safety Act of 2006 P.L. 109-248), 42 U.S.C. § 16911 *et. seq.*, as amended.

15. "Sex Offender Registry." The term "sex offender registry" means the registry of sex offenders, and a notification program, maintained by the Chief of Police or designee.

16. "National Sex Offender Registry" ("NSOR"). The national database maintained by the Attorney General of the United States pursuant to 42 U.S.C. § 16919.

17. "SMART Office." The Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, which was established within the United States Department of Justice under the general authority of the Attorney General of the United States pursuant to 42 U.S.C. § 16945.

18. "Dru Sjodin National Sex Offender Public Website" ("NSOPW"). The public website maintained by the Attorney General of the United States pursuant to 42 U.S.C. § 16920.

19. "Tier 1 Sex Offender." A "tier 1 sex offender," or a "sex offender" designated as "tier 1," is one that has been convicted of a "tier 1" sex offense as defined in Sections 7-1611 to 7-1615.

20. "Tier 2 Sex Offender." A "tier 2 sex offender," or a "sex offender" designated as "tier 2," is one that has been either convicted of a "tier 2" sex offense as defined in Sections 7-1616 to 7-1620, or who is subject to the recidivist provisions of Section 7-1616.
21. "Tier 3 Sex Offender." A "tier 3 sex offender," or a "sex offender" designated as "tier 3," is one that has been either convicted of a "tier 3" sex offense as defined in Sections 7-1621 to 7-1625, or who is subject to the recidivist provisions of Section 7-1620. [TCR 11-124]

7-1610 Covered offenses. Individuals who reside within the exterior boundaries of the reservation or otherwise reside on property owned by the Tribe in fee or trust regardless of location, are employed within the exterior boundaries of the reservation or on property owned by the Tribe in fee or trust regardless of location, or who attend school within the exterior boundaries of the reservation or on property owned by the Tribe in fee or trust regardless of location, or who remains on or may be found within the exterior boundaries of the reservation for more than six (6) hours or more than one (1) hour after sundown and during the hours of darkness, whichever duration is less, that have been convicted of any of the following offenses, or convicted of an attempt or conspiracy to commit any of the following offenses, are subject to the requirements of this Article:

1. Tribal offenses. A conviction for any of the following Tribal offenses, in conformity with Section 7-1609 (9) above, and any other Tribal offense hereinafter included in the definition of "sex offense" at Section 7-1609 (9) above.
   a. 3-412 – Non-parental kidnapping of a minor;
   b. 3-413 – Non-parental false imprisonment of a minor; first degree;
   c. 3-418 – Sexual Assault; first degree;
   d. 3-419 – Sexual Assault; second degree;
   e. 3-703 – Incest where the victim is a minor;
   f. 3-727 – Pandering where the person enticed or encouraged is a minor;
   g. 3-731 – Debauching a minor;
   h. 3-1211 (1)(C) – Sexual abuse of a vulnerable or elderly adult.
2. Federal Offenses. A conviction for any of the following, and any other offense hereafter included in the definition of "sex offense" at 42 U.S.C. § 16911(5):
   a. 18 U.S.C. § 1591 (sex trafficking of children);
   b. 18 U.S.C. § 1801 (video voyeurism of a minor);
   c. 18 U.S.C. § 2241 (aggravated sexual abuse);
   d. 18 U.S.C. § 2242 (sexual abuse);
   e. 18 U.S.C. § 2243 (sexual abuse of a minor or ward);
   f. 18 U.S.C. § 2244 (abusive sexual contact);
   g. 18 U.S.C. § 2245 (offenses resulting in death);
   h. 18 U.S.C. § 2251 (sexual exploitation of children);
   i. 18 U.S.C. § 2251A (selling or buying of children);
   j. 18 U.S.C. § 2252 (material involving the sexual exploitation of a minor);
   k. 18 U.S.C. § 2252A (material containing child pornography);
   l. 18 U.S.C. § 2252B (misleading domain names on the Internet);
   m. 18 U.S.C. § 2252C (misleading words or digital images on the Internet);
   n. 18 U.S.C. § 2260 (production of sexually explicit depictions of a minor for import into the U.S.);
   o. 18 U.S.C. § 2421 (transportation of a minor for illegal sexual activity);
   p. 18 U.S.C. § 2422 (coercion and enticement of a minor for illegal sexual activity);
   q. 18 U.S.C. § 2423 (Mann Act);
   r. 18 U.S.C. § 2424 (failure to file factual statement about an alien individual);
   s. 18 U.S.C. § 2425 (transmitting information about a minor to further criminal sexual conduct).

3. Foreign Offenses. Any conviction for a sex offense involving any conduct listed in this Section that was obtained under the laws of Canada, the United Kingdom, Australia, New Zealand, or under the laws of any foreign country when the United States State Department in its Country Reports on Human Rights Practices has concluded that an independent judiciary generally or vigorously enforced the right to a fair trial in that country during the year in which the conviction occurred.
4. Military Offenses. Any military offense specified by the Secretary of Defense under Section 115(a)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. 951 note).
5. Juvenile Offenses or Adjudications. Any sex offense, or attempt or conspiracy to commit a sex offense, that is comparable to or more severe than the federal crime of aggravated sexual abuse (as codified in 18 U.S.C. § 2241) and committed by a minor who is 14 years of age or older at the time of the offense. This includes engaging in a sexual act with another by force or the threat of serious violence; or engaging in a sexual act with another by rendering unconscious or involuntarily drugging the victim.
6. Jurisdiction Offenses. Any sex offense committed in any jurisdiction, including this Tribe, that involves:
    a. Any type or degree of genital, oral, or anal penetration;
    b. Any sexual touching of or sexual contact with a person's body, either directly or through the clothing;
    c. Non-parental kidnapping of a minor;
    d. Non-parental false imprisonment of a minor;
    e. Solicitation to engage a minor in sexual conduct understood broadly to include any direction, request, enticement, persuasion, or encouragement of a minor to engage in sexual conduct;
    f. Use of a minor in a sexual performance;
    g. Solicitation of a minor to practice prostitution;
    h. Possession, production, or distribution of child pornography;
    i. Criminal sexual conduct that involves physical contact with a minor or the use of the Internet to facilitate or attempt such conduct. This includes offenses whose elements involve the use of other persons in prostitution, such as pandering, procuring, or pimping in cases where the victim was a minor at the time of the offense;
    j. Any conduct that by its nature is a sex offense against a minor; or
    k. Any offense similar to those outlined in:
        i. 18 U.S.C. § 1591 (sex trafficking by force, fraud, or coercion);
        ii. 18 U.S.C. § 1801 (video voyeurism of a minor);
        iii. 18 U.S.C. § 2241 (aggravated sexual abuse);
        iv. 18 U.S.C. § 2242 (sexual abuse);
        v. 18 U.S.C. § 2244 (abusive sexual contact);
        vi. 18 U.S.C. § 2422(b) (coercing a minor to engage in prostitution); or
        vii. 18 U.S.C. § 2423(a) (transporting a minor to engage in illicit conduct).
        [TCR 11-124]

7-1611 Tier 1 offenses; sex offenses. A "Tier 1" offense includes any sex offense for which a person has been convicted, or an attempt or conspiracy to commit such an offense, that is not a "Tier 2" or "Tier 3" offense. [TCR 11-124]

7-1612 Tier 1 offenses; offenses involving minors. A "Tier 1" offense also includes any offense for which a person has been convicted by any jurisdiction, local government, or qualifying foreign country pursuant to Section 7-1609 (3) that involves the false imprisonment of a minor, video voyeurism of a minor, or possession or receipt of child pornography. [TCR 11-124]

7-1613 Tier 1 offenses; certain tribal offenses. Conviction for any of the following tribal offenses shall be considered a conviction for a "Tier 1" offense:

1. 3-413 – Non-parental false imprisonment of a minor; first degree;
2. 3-419 (1)(A) – Sexual Assault; second degree;
3. 3-419 (1)(B) – Sexual Assault; second degree;
4. 3-731 – Debauching a minor. [TCR 11-124]

7-1614 Tier 1 offenses; certain federal offenses. Conviction for any of the following federal offenses shall be considered a conviction for a "Tier 1" offense:

1. 18 U.S.C. § 1801 (video voyeurism of a minor);
2. 18 U.S.C. § 2252 (receipt or possession of child pornography);
3. 18 U.S.C. § 2252A (receipt or possession of child pornography);
4. 18 U.S.C. § 2252B (misleading domain names on the Internet);
5. 18 U.S.C. § 2252C (misleading words or digital images on the Internet);
6. 18 U.S.C. § 2422(a) (coercion to engage in prostitution);
7. 18 U.S.C. § 2423(b) (travel with the intent to engage in illicit conduct);
8. 18 U.S.C. § 2423(c) (engaging in illicit conduct in foreign places);
9. 18 U.S.C. § 2423(d) (arranging, inducing, procuring or facilitating the travel in interstate commerce of an adult for the purpose of engaging in illicit conduct for financial gain)
10. 18 U.S.C. § 2424 (failure to file factual statement about an alien individual); or
11. 18 U.S.C. § 2425 (transmitting information about a minor to further criminal sexual conduct).

[TCR 11-124, 12-56]

7-1615 Tier 1 offenses; certain military offenses. Any military offense specified by the Secretary of Defense under Section 115(a)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. § 951 note) that is similar to those offenses outlined in Sections 7-1610 to 7-1613 shall be considered a "Tier 1" offense. [TCR 11-124]

7-1616 Tier 2 offenses; recidivism and felonies. Unless otherwise covered by Sections 7-1621 to 7-1625, any sex offense that is not the first sex offense for which a person has been convicted and that is punishable by more than one year in jail is considered a "Tier 2" offense. [TCR 11-124]

7-1617 Tier 2 offenses; offenses involving minors. A "Tier 2" offense includes any sex offense against a minor for which a person has been convicted, or an attempt or conspiracy to commit such an offense, that involves:

1. Sex trafficking;
2. Coercion and enticement of a minor to engage in criminal sexual activity;
3. Transportation with intent to engage in criminal sexual activity;
4. Sexual contact with a minor 13 years of age or older, whether directly or indirectly through the clothing, that involves the intimate parts of the body;
5. The use of a minor in a sexual performance;
6. The use of minors in prostitution, including solicitations;
7. The production or distribution of child pornography; or
8. A non-forcible sexual act with a minor 16 or 17 years of age. [TCR 11-124, 12-56]

7-1618 Tier 2 offenses; certain tribal offenses. Conviction for any of the following tribal offenses shall be considered a conviction for a "Tier 2" offense:

1. 3-418 (1)(C) – Sexual Assault; first degree; where the victim is 13 years of age or older, but less than 16 years of age; subject to Section 7-1609(9)(f)
2. 3-419 (1)(A) – Sexual Assault; second degree; where the victim is 13 years of age or older, but less than 18 years of age;
3. 3-419 (1)(B) – Sexual Assault; second degree; where the victim is 13 years of age or older, but less than 18 years of age;
4. 3-703 – Incest where the victim is a minor;
5. 3-727 – Pandering where the person enticed or encouraged is a minor. [TCR 11-124, 12-56]

7-1619 Tier 2 offenses; certain federal offenses. Conviction for any of the following federal offenses shall be considered a conviction for a "Tier 2" offense:

1. 18 U.S.C. § 1591 (sex trafficking by force, fraud, or coercion);
2. 18 U.S.C. § 2243 (sexual abuse of a minor or ward);
3. 18 U.S.C. § 2244 (Abusive sexual contact, where the victim is 13 years of age or older);
4. 18 U.S.C. § 2251 (sexual exploitation of children);
5. 18 U.S.C. § 2251A (selling or buying of children);
6. 18 U.S.C. § 2252 (material involving the sexual exploitation of a minor);
7. 18 U.S.C. § 2252A (production or distribution of material containing child pornography);
8. 18 U.S.C. § 2260 (production of sexually explicit depictions of a minor for import into the United States);
9. 18 U.S.C. § 2421 (transportation of a minor for illegal sexual activity);
10. 18 U.S.C. § 2422(b) (coercing a minor to engage in prostitution);
11. 18 U.S.C. § 2423(a) (transporting a minor to engage in illicit conduct);
12. 18 U.S.C. § 2423(d) (arranging, inducing, procuring or facilitating the travel in interstate commerce of a minor for the purpose of engaging in illicit conduct for financial gain).
[TCR 11-124, 13-20]

7-1620 Tier 2 offenses; certain military offenses. Any military offense specified by the Secretary of Defense under Section 115(a)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. § 951 note) that is similar to those offenses outlined in Sections 7-1616 to 7-1619 shall be considered a "Tier 2" offense. [TCR 11-124]

7-1621 Tier 3 offenses; recidivism and felonies. Any sex offense that is punishable by more than one year in jail where the offender has at least one prior conviction for a Tier 2 sex offense, or has previously become a Tier 2 sex offender, is a "Tier 3" offense. [TCR 11-124]

7-1622 Tier 3 offenses; general offenses. A "Tier 3" offense includes any sex offense for which a person has been convicted, or an attempt or conspiracy to commit such an offense, that involves:

1. Non-parental kidnapping of a minor;
2. A sexual act with another by force or threat;
3. A sexual act with another who has been rendered unconscious or involuntarily drugged, or who is otherwise incapable of appraising the nature of the conduct or declining to participate; or
4. Sexual contact with a minor 12 years of age or younger, including offenses that cover sexual touching of or contact with the intimate parts of the body, either directly or through the clothing.

[TCR 11-124]

7-1623 Tier 3 offenses; certain tribal offenses. Conviction for any of the following tribal offenses shall be considered conviction for a "Tier 3" offense:

1. 3-412 – Non-parental kidnapping of a minor;

2. 3-418 (1)(A) – Sexual Assault; first degree;
3. 3-418 (1)(B) – Sexual Assault; first degree;
4. 3-418 (1)(C) – Sexual Assault; first degree; where the victim is 12 years of age or younger
5. 3-419 (1)(A) – Sexual Assault; second degree; where the victim is 12 years of age or younger
6. 3-419 (1)(B) – Sexual Assault; second degree; where the victim is 12 years of age or younger
7. 3-703 – Incest where the victim is 12 years of age or younger;
8. 3-1211 (1)(C) – Sexual abuse of a vulnerable or elderly adult. [TCR 11-124]

7-1624 Tier 3 offenses; certain federal offenses. Conviction for any of the following federal offenses shall be considered conviction for a "Tier 3" offense:

1. 18 U.S.C. § 2241 (a) and (b) (aggravated sexual abuse);
2. 18 U.S.C. § 2242 (sexual abuse); or
3. Where the victim is 12 years of age or younger, 18 U.S.C. § 2244 (abusive sexual contact). [TCR 11-124]

7-1625 Tier 3 offenses; certain military offenses. Any military offense specified by the Secretary of Defense under Section 115(a)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. § 951 note) that is similar to those offenses outlined in Sections 7-1621 to 7-1624 shall be considered a "Tier 3" offense. [TCR 11-124]

7-1626 Required information; general requirements.

1. A sex offender covered by this Act who is required to register with the Tribe pursuant to this Article shall provide all of the information detailed in this Article to the Chief of Police or designee.
2. The Chief of Police or designee shall obtain all of the information detailed in this Article from covered sex offenders who are required to register with the Tribe in accordance with this Article and shall implement any relevant policies and procedures.
3. All information obtained under this Article shall be, at a minimum, maintained by the Chief of Police, or designee, in a digitized format.
4. A sex offender registry shall be maintained in an electronic database by the Chief of Police, or designee, and shall be in a form capable of electronic transmission. [TCR 11-124]

7-1627 Criminal history. The Chief of Police or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's criminal history, including all Tribal, state and federal offenses:

1. The date of all arrests;
2. The date of all convictions;
3. The sex offender's status of parole, probation, or supervised release;
4. The sex offender's registration status; and
5. Any outstanding arrest warrants. [TCR 11-124]

7-1628 Date of Birth. The Chief of Police or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's date of birth:

1. The sex offender's actual date of birth, and
2. Any other date of birth used by the sex offender. [TCR 11-124]

7-1629 DNA sample.

1. If the sex offender's DNA is not already contained in the Combined DNA Index System (CODIS), the sex offender shall provide the Chief of Police or designee a sample of his DNA.
2. Any DNA sample obtained from a sex offender shall be submitted to an appropriate lab for analysis and entry of the resulting DNA profile in to CODIS. [TCR 11-124]

7-1630 Driver's licenses, identification cards, passports, and immigration documents.

1. The Chief of Police or designee shall obtain, and a covered sex offender shall provide, a photocopy of all of the sex offender's valid driver's licenses issued by any jurisdiction.
2. The Chief of Police or designee shall obtain, and a covered sex offender shall provide, a photocopy of any identification card including the sex offender's Tribal enrollment card issued by any jurisdiction.
3. The Chief of Police or designee shall obtain, and a covered sex offender shall provide, a photocopy of any passports used by the sex offender.
4. The Chief of Police or designee shall obtain, and a covered sex offender shall provide, a photocopy of any and all immigration documents.
5. The Chief of Police or designee shall obtain, and a covered sex offender shall provide, any and all document numbers associated with the items listed in Section 7-1630 (1) through (4). [TCR 11-124]

7-1631 Employment information. The Chief of Police or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's employment, to include any and all places where the sex offender is employed in any means including volunteer and unpaid positions:

1. The name of the sex offender's employer;
2. The address of the sex offender's employer; and
3. Similar information related to any transient or day labor employment. [TCR 11-124]

7-1632 Finger and palm prints. The Chief of Police or designee shall obtain, and a covered sex offender shall provide, both fingerprints and palm prints of the sex offender in a digitized format. [TCR 11-124]

7-1633 Internet identifiers. The Chief of Police or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's Internet related activity:

1. Any and all email addresses used by the sex offender;
2. Any and all Instant Message addresses and identifiers;
3. Any and all third party Internet identifiers used by the sex offender, or on the sex offender's behalf;
4. Any and all other designations or monikers used for self-identification in Internet communications or postings; and
5. Any and all designations used by the sex offender for the purpose of routing or self-identification in Internet communications or postings. [TCR 11-124]

7-1634 Name. The Chief of Police or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's name:

1. The sex offender's full primary given name;
2. Any and all nicknames, aliases, and pseudonyms regardless of the context in which it is used; and

3. Any and all ethnic or Tribal names by which the sex offender is commonly known. This does not include any religious or sacred names not otherwise commonly known. [TCR 11-124]

7-1635 Offense information. The Chief of Police or designee shall obtain the text of each provision of law defining the criminal offense(s) for which the sex offender is registered. [TCR 11-124]

7-1636 Phone numbers. The Chief of Police or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's telephone numbers:

1. Any and all land line telephone numbers; and
2. Any and all cellular telephone numbers. [TCR 11-124]

7-1637 Picture. The Chief of Police or designee shall obtain, and a covered sex offender shall provide, a current photograph of the sex offender and a photograph of any identifying marks as listed in Section 3-938. A digitized photograph shall be collected pursuant to the time frames set forth in Section 7-1645, or:

1. Quarterly per year (every 90 days) for Tier 3 sex offenders;
2. Twice per year (every 180 days) for Tier 2 sex offenders; and
3. Every year for Tier 1 sex offenders. [TCR 11-124]

7-1638 Physical description. The Chief of Police or designee shall obtain, and a covered sex offender shall provide, an accurate description of the sex offender as follows:

1. A physical description;
2. A general description of the sex offender's physical appearance or characteristics; and
3. Any identifying marks, such as, but not limited to, scars, moles, birthmarks, or tattoos. [TCR 11-124]

7-1639 Professional licensing information. The Chief of Police or designee shall obtain, and a covered sex offender shall provide, all licensing of the sex offender that authorizes the sex offender to engage in an occupation or carry out a trade or business. [TCR 11-124]

7-1640 Residence address. The Chief of Police or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's residence:

1. The address of each residence at which the sex offender resides or will reside; and
2. Any location or description that identifies where the sex offender habitually resides regardless of whether it pertains to a permanent residence or location otherwise identifiable by a street or address. [TCR 11-124]

7-1641 School. The Chief of Police or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's school:

1. The address of each school where the sex offender is or will be a student; and
2. The name of each school the sex offender is or will be a student. [TCR 11-124]

7-1642 Social Security Number. The Chief of Police or designee shall obtain, and a covered sex offender shall provide, the following information:

1. A valid social security number for the sex offender; and
2. Any social security number the sex offender has used in the past, valid or otherwise. [TCR 11-124]

7-1643 Temporary lodging and international travel.

1. The Chief of Police or designee shall obtain, and a covered sex offender shall provide, the following information when the sex offender will be absent from his residence for seven (7) days of more:

    a. Identifying information of the temporary lodging locations including addresses and names;
    b. The dates the sex offender will be staying at each temporary lodging location; and
    c. The sex offender shall provide the information in Section (1)(a) and (b) no later than five (5) days before his scheduled travel.
2. Sex offenders must inform their residence jurisdictions twenty-one (21) days in advance if they intend to travel outside of the United States.
    a. Jurisdictions must notify the U.S. Marshals Service and immediately notify any other jurisdiction where the sex offender is either registered, or is required to register, of that updated information. Such information must also be updated to NCIC/NSOR.
    b. In the event the sex offender will be traveling outside of the United States for more than seven (7) days, the Chief of Police or designee shall immediately provide this information to INTERPOL. [TCR 11-124, 12-56]

7-1644 Vehicle information. The Chief of Police or designee shall obtain, and a covered sex offender shall provide, the following information related to all vehicles owned or operated by the sex offender for work or personal use including land vehicles, aircraft, and watercraft:

1. License plate numbers;
2. Registration numbers or identifiers;
3. General description of the vehicle to include color, make, model, and year;
4. Any permanent or frequent location where any covered vehicle is kept; and
5. Information on vehicles belonging to other persons with whom the sex offender resides. [TCR 11-124]

7-1645 Frequency. A sex offender who is required to register shall, at a minimum, appear in person at the Chief of Police for purposes of verification and keeping their registration current in accordance with the following time frames:

1. For “Tier 1” offenders, once every year for 15 years from the time of release from custody for a sex offender who is incarcerated for the registration offense or from the date of sentencing for a sex offender who is not incarcerated for the registration offense.
    a. “Tier 1” offenders shall report every twelve (12) months in the month of his or her birth, in person, to the office of the Chief of Police or designee, regardless of the original registration month.
    b. Birth month shall not be construed to mean within thirty (30) days of the birth date.
2. For “Tier 2” offenders, twice per year (once every 180 days) for 25 years from the time of release from custody for a sex offender who is incarcerated for the registration offense or from the date of sentencing for a sex offender who is not incarcerated for the registration offense.
    a. “Tier 2” offenders shall report, in person, in the month of his or her birth and in the sixth month following the month of his or her birth, regardless of the original registration month.
    b. Birth month shall not be construed to mean within thirty (30) days of the birth date.
3. For “Tier 3” offenders, quarterly per year (once every 90 days) for the rest of their lives.

a. "Tier 3" offenders shall report, in person, in the month of his or her birth and every three months following the month of his or her birth, regardless of the original registration month.
b. Birth month shall not be construed to mean within thirty (30) days of the birth date. [TCR 11-124]

7-1646 Reduction of registration periods. A sex offender may have their period of registration reduced as follows:

1. Tier 1 offender may have his or her period of registration reduced to 10 years if he or she has maintained a clean record for 10 consecutive years.
2. A Tier 3 offender may have his or her period of registration reduced to 25 years if he or she was adjudicated delinquent of an offense as a juvenile that required Tier 3 registration and he or she has maintained a clean record for 25 consecutive years. [TCR 11-124]

7-1647 Clean record. For purposes of Section 7-1646 a person has a clean record if:

1. He or she has not been convicted of any offense, for which imprisonment for more than 1 year may be imposed;
2. He or she has not been convicted of any Tribal Class I offense;
3. He or she has not been convicted of any sex offense;
4. He or she has successfully completed, without revocation, any period of supervised release, probation, or parole; and
5. He or she has successfully completed an appropriate sex offender treatment program certified by the Tribe, another jurisdiction, or by the Attorney General of the United States. [TCR 11-124]

7-1648 Requirements for in person appearances.

1. At each in person verification, the sex offender shall permit the Chief of Police to take a photograph of the offender and of the offender's identifying marks as listed in Section 7-1638.
2. At each in person verification, the sex offender shall review existing information for accuracy.
3. If any new information or change in information is obtained at an in person verification, the Chief of Police shall immediately notify all other jurisdictions in which the sex offender is required to register of the information or change in information. [TCR 11-124]

7-1649 Where registration is required; jurisdiction of conviction. A sex offender must initially register with the Chief of Police of the Winnebago Tribe if the sex offender was convicted by the Tribal Court of a covered sex offense regardless of the sex offender's actual or intended residency. [TCR 11-124]

7-1650 Where registration is required; jurisdiction of incarceration. A sex offender must register with the Chief of Police of the Winnebago Tribe if the sex offender is incarcerated by the Tribe while completing any sentence for a covered sex offense, regardless of whether it is the same jurisdiction as the jurisdiction of conviction or residence. [TCR 11-124]

7-1651 Where registration is required; jurisdiction of residence. A sex offender must register with the Chief of Police of the Winnebago Tribe if the sex offender resides within the exterior boundaries of the Winnebago Indian Reservation or resides on property owned by the Tribe in fee or trust, regardless of location. [TCR 11-124]

7-1652 Where registration is required; jurisdiction of employment. A sex offender must register with the Chief of Police of the Winnebago Tribe if he or she is employed by the Tribe in any capacity or

otherwise is employed within the exterior boundaries of the Winnebago Indian Reservation or on property owned by the Tribe in fee or trust, regardless of location. [TCR 11-124]

7-1653 Where registration is required; jurisdiction of school attendance. A sex offender must register with the Chief of Police of the Winnebago Tribe if the sex offender is a student in any capacity within the exterior boundaries of the Winnebago Indian Reservation or on property owned by the Tribe in fee or trust, regardless of location. [TCR 11-124]

7-1654 Where registration is required; jurisdiction where may be found. A sex offender must register with the Chief of Police of the Winnebago Tribe if the sex offender is one who, not otherwise subject to this Article pursuant to Sections 7-1649 through 7-1653, remains on, or may be found within the exterior boundaries of the reservation, for more than six (6) hours, or more than one (1) hour after sundown and during the hours of darkness, whichever duration is less.

1. Such sex offender shall register upon becoming required to do so pursuant to this Section.
2. Such registration shall be treated and noted as temporary. Such sex offenders are not otherwise subject to the frequency requirements under Section 7-1645 unless the sex offender is or otherwise becomes required to register as a sex offender under this Article.
3. The Chief of Police or designee shall have policies and procedures in place regarding registration requirements for temporary registrations. [TCR 11-124]

7-1655 Timing of registration; timeframe. A sex offender required to register with the Tribe under this Article shall do so in the following timeframe:

1. If convicted by the Winnebago Tribe for a covered sex offense and incarcerated, the sex offender must register before being released from incarceration;
2. If convicted by the Winnebago Tribe but not incarcerated, within three (3) days of sentencing for the registration offense; and
3. Within three (3) days of establishing a residence, commencing employment, or becoming a student on lands subject to the jurisdiction of the Tribe, a sex offender must appear in person to register with the Chief of Police or designee. [TCR 11-124]

7-1656 Timing of registration; duties of Chief of Police. The Chief of Police shall have policies and procedures in place to ensure the following:

1. That any sex offender incarcerated or sentenced by the Tribe for a covered sex offense completes their initial registration with the Tribe;
2. That the sex offender reads, or has read to them, and signs a form stating that the duty to register has been explained to them and that the sex offender understands the registration requirement;
3. That the sex offender is registered;
4. That upon receipt of registration and confirmation of the registry requirement, the sex offender is notified of his or her registry duration and verification schedule; and
5. That upon entry of the sex offender's information into the registry, that information is immediately forwarded to all other jurisdictions in which the sex offender is required to register due to the sex offender's residency, employment, or student status. [TCR 11-124]

7-1657 Retroactive registration. The Chief of Police shall have in place policies and procedures to ensure the following three categories of sex offenders are subject to the registration and updating requirements of this Article:

1. Sex offenders incarcerated or under the supervision of the Tribe, whether for a covered sex offense or other crime;

2. Sex offenders already registered or subject to a pre-existing sex offender registration requirement under the Tribe's laws; and
3. Sex offenders reentering the justice system due to arrest for any crime. [TCR 11-124, 12-56]

7-1658 Timing of recapture. The Chief of Police shall ensure recapture of the sex offenders mentioned in Section 7-1657 within the following timeframe to be calculated from the Effective Date of this Article:

1. For Tier 1 sex offenders, 1 year;
2. For Tier 2 sex offenders, 180 days; and
3. For Tier 3 sex offenders, 90 days. [TCR 11-124]

7-1659 Keeping registration current; jurisdiction of residency.

1. All sex offenders required to register in this jurisdiction shall immediately appear in person at the Winnebago Law Enforcement Services headquarters to update any changes to their name, residence (including termination of residency), employment, or school attendance.
2. All sex offenders required to register in this jurisdiction shall immediately inform the Chief of Police in writing using an approved form, as prescribed by the Chief of Police for such purpose, of any changes to their temporary lodging information, vehicle information, Internet identifiers, or telephone numbers.
3. In the event of a change in temporary lodging, the sex offender and Chief of Police shall immediately notify the jurisdiction in which the sex offender will be temporarily staying. [TCR 11-124]

7-1660 Keeping registration current; jurisdiction of school attendance.

1. Any sex offender who is a student in any capacity within the exterior boundaries of the Winnebago Indian Reservation or on property owned by the Tribe in fee or trust, regardless of location, that change their school, or otherwise terminate their schooling, shall immediately appear in person at the Winnebago Law Enforcement Services headquarters to update that information.
2. The Chief of Police shall ensure that each jurisdiction in which the sex offender is required to register, or was required to register prior to the updated information being given, are immediately notified of the change. [TCR 11-124]

7-1661 Keeping registration current; jurisdiction of employment.

1. Any sex offender who is employed by the Tribe in any capacity or otherwise is employed within the exterior boundaries of the Winnebago Indian Reservation or on property owned by the Tribe in fee or trust, regardless of location, that change their employment, or otherwise terminate their employment, shall immediately appear in person at Winnebago Law Enforcement Services headquarters to update that information.
2. The Chief of Police shall ensure that each jurisdiction in which the sex offender is required to register, or was required to register prior to the updated information being given, are immediately notified of the change. [TCR 11-124]

7-1662 Keeping registration current; duties of Chief of Police. With regard to changes in a sex offender's registration information, the Chief of Police or designee shall immediately notify:

1. All jurisdictions where a sex offender intends to reside, work, or attend school;
2. Any jurisdiction where the sex offender is either registered or required to register; and

3. Specifically with respect to information relating to a sex offender's intent to commence residence, school, or employment outside of the United States, any jurisdiction where the sex offender is either registered or required to register, and the U.S. Marshal's Service. The Winnebago Law Enforcement Services shall also ensure this information is immediately updated on NSOR. [TCR 11-124]

7-1663 Failure to appear for registration and absconding; failure to appear. In the event a sex offender fails to register with the Tribe as required by this Article, the Chief of Police or designee shall immediately inform the jurisdiction that provided notification that the sex offender was to commence residency, employment, or school attendance with the Tribe that the sex offender failed to appear for registration. [TCR 11-124]

7-1664 Failure to appear for registration and absconding; absconded sex offenders. If the Chief of Police or designee receives information that a sex offender has absconded, the Chief of Police shall make an effort to determine if the sex offender has actually absconded.

1. In the event no determination can be made, the Chief of Police or designee shall ensure the Winnebago Law Enforcement Services and any other appropriate law enforcement agency is notified.
2. If the information indicating the possible absconding came through notice from another jurisdiction or federal authorities, they shall be informed that the sex offender has failed to appear and register.
3. If an absconded sex offender cannot be located, then the Winnebago Law Enforcement Services shall take the following steps:
    a. Update the registry to reflect the sex offender has absconded or is otherwise not capable of being located;
    b. Notify the U.S. Marshal's Service;
    c. Seek a warrant for the sex offender's arrest. The U.S. Marshal's Service or FBI may be contacted in an attempt to obtain a federal warrant for the sex offender's arrest;
    d. Update the NSOR to reflect the sex offender's status as an absconder, or is otherwise not capable of being located; and
    e. Enter the sex offender into the National Crime Information Center Wanted Person File. [TCR 11-124]

7-1665 Failure to appear for registration and absconding; failure to register. In the event a sex offender who is required to register due to their employment or school attendance status fails to do so or otherwise violates a registration requirement of this Article, the Chief of Police shall take all appropriate follow-up measures including those outlined in Section 7-1664. The Chief of Police shall first make an effort to determine if the sex offender is actually employed or attending school in lands subject to the Tribe's jurisdiction. [TCR 11-124]

7-1666 Website. The Chief of Police shall use and maintain a public sex offender registry website. The registry website shall include the following:

1. Links to sex offender safety and education resources;
2. Instructions on how a person can seek correction of information that the individual contends is erroneous;
3. A warning that the information contained on the website should not be used to unlawfully injure, harass, or commit a crime against any individual named in the registry or residing or working at any reported addresses and that any such action could result in civil or criminal penalties; and
4. The registry website shall have the capability of conducting searches by (1) name; (2) county, city, and/or town; and, (3) zip code and/or geographic radius. [TCR 11-124]

7-1667 Dru Sjodin National Sex Offender Public Website. The Tribe shall include in the design of its website all field search capabilities needed for full participation in the Dru Sjodin National Sex Offender Public Website and shall participate in that website as provided by the Attorney General of the United States. [TCR 11-124]

7-1668 Required website information. The following information shall be made available to the public on the sex offender registry website:

1. Notice that an offender is in violation of their registration requirements or cannot be located if the sex offender has absconded;
2. All sex offenses for which the sex offender has been convicted;
3. The sex offense(s) for which the offender is currently registered;
4. The address of the sex offender's employer(s);
5. The name of the sex offender including all aliases;
6. A current photograph of the sex offender;
7. A physical description of the sex offender;
8. The residential address and, if relevant, a description of a habitual residence of the sex offender;
9. All addresses of schools attended by the sex offender; and
10. The sex offender's vehicle license plate number along with a description of the vehicle. [TCR 11-124]

7-1669 Prohibited website information. The following information shall not be available to the public on the sex offender registry website:

1. Any arrest that did not result in conviction;
2. The sex offender's social security number;
3. Any travel and immigration documents;
4. The identity of the victim; and
5. Internet identifiers (as defined in 42 U.S.C. § 16911). [TCR 11-124]

7-1670 Witness protection. For sex offenders who are under a witness protection program, the Winnebago Law Enforcement Services may honor the request of the United States Marshals Service or other agency responsible for witness protection by not including the original identity of the offender on the publicly accessible sex offender registry website. [TCR 11-124]

7-1671 Law enforcement notification. Whenever a sex offender registers or updates his or her information with the Tribe, the Chief of Police or designee shall:

1. Monitor and utilize the SORNA Exchange Portal for inter-jurisdictional change of residence, employment or student status.
2. Immediately notify the FBI or other federal agency as designated by the Attorney General in order that the information may be updated on NCIC/NSOR or other relevant databases.
3. Immediately notify any agency, department, or program within the Tribe that is responsible for criminal investigation, prosecution, child welfare or sex offender supervision functions, including but not limited to, police, whether BIA, tribal, or FBI, tribal prosecutors, and tribal probation.
4. Immediately notify any and all other registration jurisdictions where the sex offender is registered due to the sex offender's residency, school attendance, or employment.
5. Immediately notify National Child Protection Act agencies, which includes any agency responsible for conducting employment-related background checks under Section 3 of the National Child Protection Act of 1993 (42 U.S.C. § 5119a) when a sex offender registers or updates registration. [TCR 11-124, 12-56]

7-1672 Community notification. The Chief of Police shall ensure there is an automated community notification process in place that ensures the following:

1. Upon a sex offender's registration or update of information with the Tribe, the Tribe's public sex offender registry website is immediately updated.
2. The Tribe's public sex offender registry has a function that enables the general public to request an e-mail notice that will notify them when a sex offender commences residence, employment, or school attendance with the Tribe, within a specified zip code, or within a certain geographic radius. This email notice shall include the sex offender's identity so that the public can access the public registry for the new information.
3. The Chief of Police or his/her designee is authorized to publish or distribute the registration information given under Section 7-1668. [TCR 11-124]

7-1673 No waiver of immunity. Nothing under this Article shall be construed as a waiver of sovereign immunity for the Winnebago Tribe of Nebraska**,** its departments, agencies, employees, or agents. [TCR 11-124]

7-1674 Good faith. Any person acting under good faith of this Article shall be immune from any civil liability arising out of such actions. [TCR 11-124]

7-1675 Violation; criminal offense.

1. Each violation of a provision of this Article by a sex offender shall be punishable as a Class I offense.
2. Sex offenders who fail to register as provided in this Act may also be subject to enforcement by banishment or exclusion. [TCR 11-124]

7-1676 Violation; civil penalty.

1. Each violation of a provision of this Article by a sex offender shall be a civil offense, and the Tribal Court shall impose a minimum civil penalty of one thousand ($1,000.00) dollars.
2. Sex offenders who fail to register as provided in this Article shall be subject to enforcement by any means not prohibited by federal law, including, but not limited to the issuance of penalties, forfeitures, civil contempt.
3. Sex offenders who fail to register as provided in this Article may also be subject to enforcement by banishment or exclusion. [TCR 11-124]

7-1677 Hindrance of sex offender registration; criminal offense. Any person subject to criminal jurisdiction of the Winnebago Tribe is guilty of a Class I offense if he/she:

1. Knowingly harbors or knowingly attempts to harbor, or knowingly assists another person in harboring or attempting to harbor a sex offender who is in violation of this Article;
2. Knowingly assists a sex offender in eluding a law enforcement agency that is seeking to find the sex offender to question the sex offender about, or to arrest the sex offender for, noncompliance with the requirements of this Article; or
3. Provides information to law enforcement agency regarding a sex offender which the person knows to be false. [TCR 11-124]

7-1678 Hindrance of sex offender registration; civil penalty. Any person not subject to criminal jurisdiction of the Winnebago Tribe is deemed to commit a civil offense and subject to a minimum civil penalty of one thousand ($1,000.00) dollars if he/she:

1. Knowingly harbors or knowingly attempts to harbor, or knowingly assists another person in harboring or attempting to harbor a sex offender who is in violation of this Article;
2. Knowingly assists a sex offender in eluding a law enforcement agency that is seeking to find the sex offender to question the sex offender about, or to arrest the sex offender for, noncompliance with the requirements of this Article; or
3. Provides information to law enforcement agency regarding a sex offender which the person knows to be false. [TCR 11-124]

TITLE 7
ARTICLE 17
SEX OFFENDER RESTRICTIONS
(Adopted Oct. 19, 2011)

7-1701 Purpose.
7-1702 Definitions.
7-1703 Residency restrictions; general.
7-1704 Residency restrictions; civil penalty.
7-1705 Residency restrictions; tribal property
7-1706 Measurement of distance.
7-1707 Renting to a sex offender.
7-1708 Exclusion zones.
7-1709 Exclusion zones; civil penalty.
7-1710 Effective date.

7-1701 Purpose. The Winnebago Tribe of Nebraska finds that sex offenders present a high risk of recidivism and seeks to restrict such person's place of residency and exposure to its most vulnerable citizens. The Winnebago Tribe of Nebraska has a compelling interest to protect the health, safety, and welfare of its most vulnerable citizens from the risk that sex offenders may reoffend where children congregate on a regular concentrated basis by prohibiting sex offenders from establishing a residence around schools, childcare facilities, youth program facilities, and playgrounds. [TCR 12-17]

7-1702 Definitions.

1. "School" means a public or nonpublic pre-school, elementary or secondary school.
2. "Sex offender" shall mean an individual who has been convicted of a sex offense as set forth in Section 7-1610 and is required to register as a sex offender pursuant to the Winnebago Tribe of Nebraska Sex Offender Registration Act, Title 7, Article 16. [TCR 12-17]

7-1703 Residency restrictions; general.

1. A sex offender shall not reside within one thousand (1,000) feet of the real property comprising a school, childcare facility, youth program facility, or playground.
2. Exceptions. A sex offender residing within one thousand (1,000) feet of the real property comprising a school, childcare facility, youth program facility, or playground does not commit a violation of subsection (1) if any of the following apply:
   - A. The sex offender is required to serve a sentence at a jail, prison, juvenile facility, or other correctional institution or facility and a judge grants an exemption from the residency restriction;
   - B. The sex offender is subject to an order of commitment and a judge grants an exemption from the residency restriction;
   - C. The sex offender has established a residence prior to any newly located school, childcare facility, youth program facility, or playground being established and a judge grants an exemption from the residency restriction;
   - D. The sex offender is a minor and a judge grants an exemption from the residency restriction;
   - E. The sex offender is a ward in a guardianship, and the judge grants an exemption from the residency restriction; or
   - F. The sex offender is a patient or resident at a health care facility or a patient in a hospice program, and a judge grants an exemption from the residency restriction. [TCR 12-17]

7-1704 Residency restrictions; civil penalty. Each violation of Section 7-1703 shall be a civil offense and subject to a minimum civil penalty of one-thousand dollars ($1,000.00). [TCR 12-17]

7-1705 Residency restrictions; tribal property.

1. A sex offender shall not be permitted to lease, rent, or reside in tribal housing rental units owned by the Winnebago Tribe of Nebraska.
2. A sex offender shall not be permitted to lease, rent, or reside on any land owned by or held in trust for the Winnebago Tribe of Nebraska.
3. Any lease between the Winnebago Tribe of Nebraska and a sex offender whereby the sex offender purports to lease, rent or reside in any tribally-owned housing rental units or on tribally-owned land, including property held in trust for the Winnebago Tribe of Nebraska by the United States of America, shall be deemed null and void. [TCR 12-17]

7-1706 Measurement of distance. For purposes of determining the minimum distance separation, the requirement shall be measured by following a straight line from the outer property line of the real property comprising a residence to the nearest outer property line of the real property comprising the school, childcare facility, youth program facility or playground. [TCR 12-17]

7-1707 Renting to a sex offender. An owner or lessee of a real property described in Section 7-1703(1) who knowingly rents, leases to, or otherwise allows to reside on said property a sex offender who is required to register under the WTN Sex Offender Registration Notification Act shall be subject to a civil offense and a minimum civil penalty of five hundred dollars ($500.00). [TCR 12-17]

7-1708 Exclusion zones.

1. A sex offender shall not do any of the following:
   A. Be present upon the real property of a public or nonpublic elementary or secondary school without the written permission of the school administrator or school administrator's designee, unless enrolled as a student at the school.
   B. Loiter within one hundred (100) feet of the real property boundary of a school, unless enrolled as a student at the school.
   C. Be present on or in any vehicle or other conveyance owned, leased, or contracted by a school without written permission of the school administrator or school administrator's designee when the vehicle is in use to transport students to or from a school or school-related activities, unless enrolled as a student at the school or unless the vehicle is simultaneously made available to the public as a form of public transportation.
   D. Be present upon the real property of a childcare facility without the written permission of the childcare facility administrator.
   E. Loiter within one hundred (100) feet of the real property boundary of a youth program facility.
   F. Loiter on or within one hundred (100) feet of the premises of a playground.
   G. Loiter on or within one hundred (100) feet of the premises of any place where a tribal event is held where the event is primarily intended for children.

2. A sex offender:
   A. Who resides in a dwelling located within one thousand (1,000) feet of the real property boundary of those premises described in subsection (1) pursuant to a residency exemption under Section 7-1703(2) shall not be in violation of subsection (1) for having an established residence within the exclusion zone.
   B. Who is the parent or legal guardian of a minor shall not be in violation of subsection (1) solely during the period of time reasonably necessary to transport the offender's own minor child or ward to or from a place specified in subsection (1).
   C. Who is legally entitled to vote shall not be in violation of subsection (1) solely for the period of time reasonably necessary to exercise the right to vote in a public or tribal

election if the polling location of the offender is located in a place specified in subsection (1). [TCR 12-17]

7-1709 Exclusion zones; civil penalty. Each violation of Section 7-1708 shall be a civil offense and subject to a minimum civil penalty of two hundred dollars ($200.00). [TCR 12-17]

7-1710 Effective date. This Article shall be effective thirty (30) days from the date of adoption by the Winnebago Tribal Council. [TCR 12-17]

TITLE 7
ARTICLE 18
WHISTLE BLOWER PROTECTION
(Adopted October 5, 2015)

7-1801 Citation.
7-1802 Purpose.
7-1803 Scope.
7-1804 Authority.
7-1805 Definitions.
7-1806 Employee's Duty to Report.
7-1807 Reports of Criminal Activity.
7-1808 Reports of Mismanagement, Waste, Abuse, or Dangers to Public Health or Safety.
7-1809 Retaliation Prohibited.
7-1810 Reporting that is not Protected.
7-1811 False Claims.
7-1812 Cause of Action.
7-1813 Limited Waiver of Sovereign Immunity.
7-1814 Limited Remedies.
7-1815 Exclusive Jurisdiction and Sovereign Immunity.
7-1816 Effective Date.

7-1801 Citation. This Article shall be known and may be cited as the "Whistle Blower Protection Act." [TCR 15-135]

7-1802 Purpose. The Tribal Council finds and declares that it is in the vital interest of the Winnebago Tribe of Nebraska that its government and entities operate in accordance with law and without mismanagement, waste, abuse, or dangers to public health or safety. If this interest is to be protected, Tribal officials and employees must work in a climate where conscientious services is encouraged and disclosures of illegalities or improprieties may be without reprisal or fear of reprisal. The purpose of the Whistle Blower Protection Act is to prohibit retaliatory action against employees who report violations of law, including but not limited to fraud, theft, and embezzlement, and report mismanagement, waste, abuse, or dangers to public health or safety. [TCR 15-135]

7-1803 Scope. This Act governs all whistleblower protection proceedings over any person within the jurisdiction of the Winnebago Tribe. [TCR 15-135]

7-1804 Authority. This Act is adopted pursuant to the inherent sovereign powers of the Winnebago Tribe of Nebraska and the Constitution of the Winnebago Tribe of Nebraska, as amended. [TCR 15-135]

7-1805 Definitions. Where a term is not defined in this Act, it shall be given its ordinary meaning, unless otherwise defined in the Winnebago Tribal Code. The Definitions below apply to this Act only:

1. "Abuse" is the intentional or improper use of Tribal resources. Abuse of Authority requires an arbitrary or capricious exercise of power by a Tribal official or employee that adversely affects the rights of any person or that results in personal gain or advantage to himself or to preferred other persons.
2. "Employee" means any person employed by the Tribe or any tribally-owned entity.
3. "Employer" means all departments and agencies of the Tribal Government and any tribally-owned entity.
4. "Gross mismanagement" means a management action or inaction which creates a substantial risk of significant impact upon the tribal entity's ability to accomplish its mission.
5. "Gross waste of funds" means a more than debatable expenditure that is significantly out of proportion to the benefit reasonably expected to accrue to the Tribe.
6. "Malice" means the intent, without just cause or reason, to commit a wrongful act that will result in harm to another.

7. "Reckless indifference" means conscious or reckless disregard of the consequences of one's acts or omissions.
8. "Waste" is the extravagant, careless, or needless expenditure or Tribal funds, or the consumption of Tribal property, which results from deficient practices, systems, controls, or decisions. The term also includes improper practices not involving prosecutable fraud.
9. "Whistleblower" means an employee who discloses information that he or she reasonably believes to be:
    a. A violation of any law, rule, or regulation; or
    b. Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. [TCR 15-135]

7-1806 Employee's Duty to Report.

1. All employees with knowledge or information about actual or possible violations of criminal law related to Tribal programs, operations, facilities, contracts, or information technology systems shall immediately report such knowledge or information to their supervisor, any Tribal management official, Tribal law enforcement, or to the Tribal Prosecutor.
2. All employees with knowledge or information about violation of any law, rule, or regulation, or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety by the Employer shall immediately report such knowledge or information to their supervisor, any Tribal management official, the General Counsel, or to the Tribal Council. [TCR 15-135]

7-1807 Reports of Criminal Activity. Information about actual or possible violations of criminal laws related to Tribal programs, operations, facilities, contracts, or information technology systems shall be reported by the supervisory or Tribal management officials to the Tribal law enforcement and/or the Tribal Prosecutor. [TCR 15-135]

7-1808 Reports of Mismanagement, Waste, Abuse, or Dangers to Public Health or Safety.

1. When information is received by a supervisor, Tribal management official, General Counsel, or the Tribal Council about actual or possible violations of any law, rule, or regulation, or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety by the Employer, it shall be forwarded to the designated office or official for immediate review.
2. The designated office or official shall review such matter and conduct an investigation into the matter as such office shall deem appropriate. The designated office or official shall have power to questions witnesses and require the production of any necessary books, papers or other documents, where necessary, for the purpose of investigation.
3. Upon the conclusion of the investigation, the designated office or official shall report their findings to the next highest management official.
4. The Tribe and each entity shall designate an office or official to review and investigate reports violations of any law, rule, or regulation, or reports of gross mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health or safety. The Tribe and its entities shall adopt procedures for reporting and investigating into their respective policies. Such procedures shall conform to this Act. [TCR 15-135]

7-1809 Retaliation Prohibited. No employee shall be terminated, demoted, penalized, or disciplined in any way as a direct result of the employee's reporting of activity, over which the employee, acting in good faith, has reasonable cause to believe to be in violation of any applicable law, rule, or regulation, or to be a gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific

danger to public health or safety, to a supervisor, a Tribal management official, Tribal law enforcement, the Tribal Prosecutor, General Counsel, or the Tribal Council. [TCR 15-135]

7-1810 Reporting that is not Protected.

1. If the potential whistleblower is reporting what a reasonable person would consider arguably minor and inadvertent miscues occurring in the conscientious carrying out of one's assigned duties, then the disclosure is not protected.
2. Reporting something that the whistleblower knows is untrue is not protected. [TCR 15-135]

7-1811 False claims. Any employee who is found to have, with knowledge, made false reporting under this Act shall be subject to disciplinary action up to and including dismissal. [TCR 15-135]

7-1812 Cause of Action. Any employee who is subject to retaliatory action based on good faith and reasonable reporting as described in 7-1809 shall have standing to bring a cause of action in Tribal Court against the person or persons who took the retaliatory action for the remedies set forth in this Act. [TCR 15-135]

7-1813 Limited Waiver of Sovereign Immunity.

1. The Tribe clearly and expressly grants a limited waiver of its sovereign immunity solely with respect to the limited remedies as set forth in this Act.
2. Officials, individual employees and/or managers of the Tribe, who act beyond the scope of their duties and authority in which the actions include either acting with malice or with reckless indifference are not immune from suit. [TCR 15-135]

7-1814 Limited Remedies.

1. Any allegation of violation must be filed with the Tribal Court within thirty (30) days of the alleged violation.
2. In any action filed under this Act, the Tribal Court may grant the following remedies:
    a. *Equitable Remedies*. If the Tribal Court finds a violation occurred, its judgment must specify an appropriate remedy or remedies for that violation. The remedies may include, but are not limited to:
        i. An order to cease and desist from the unlawful practices specified in the order;
        ii. An order to employ or reinstate the employee, with or without back pay or reasonable front pay if reinstatement is unfeasible.
    b. *Damages*. If the Tribal Court finds a blatant violation, the Tribal Court may additionally award compensatory damages, punitive damages, and/or fines.
    c. The total sum of compensatory damages, punitive damages, and/or fines may not exceed Five Thousand Dollars ($5,000.00), excluding the amount for actual loss of wages.
    d. The Tribal Court may award reasonable attorney fees and costs in its discretion to the prevailing party.
    e. The Tribal Court may charge the non-prevailing party court costs.
    f. If the Tribal Court finds the non-prevailing party's claims were frivolous, the Court may fine the party and may order any other appropriate remedies as the Tribal Court deems. [TCR 15-135]

7-1815 Exclusive Jurisdiction and Sovereign Immunity.

1. *Exclusive Tribal Jurisdiction*. The Tribal Court has have exclusive jurisdiction over claims or actions of any kind allowed pursuant to this Act.
2. *No Waiver as to Other Forums*. Northing herein shall be construed as a waiver of the sovereign immunity of the Tribe from any suit or action in state, federal or any other tribal court, before any state, federal or tribal agency or in any other forum or context whatsoever.
3. *No Waiver as to Claim Defended by United States*. Notwithstanding any other provision of this Act, there shall be no waiver of sovereign immunity as to any claim of injury which is defended by the United States because such claim is deemed a claim against the United States under the Indian Self-Determination and Education Assistance Act, the Federal Tort Claims Act, or any other federal law. Upon certification by the Tribal Council that defense of any claim of injury has been tendered to the United States, any action or proceeding on such claim shall be stayed by order of the Tribal Court without bond. The action or proceeding in the Tribal Court shall be dismissed, after notice to the parties and opportunity for a hearing, upon receipt of notice satisfactory to the Tribal Court that the United States has assumed defense of the claim of injury. The stay shall be dissolved and an order directing further proceedings in the action or proceeding on the claim of injury shall be entered by the Tribal Court, after notice and hearing thereon, upon receipt of notice satisfactory to the Tribal Court that the United States has declined to assume defense of the claim of injury. [TCR 15-135]

7-1816 Effective Date. This Act shall be effective January 3, 2016. [TCR 15-135]

TITLE 7
ARTICLE 19
SETTLING PARTICIPANT BRAND LISTING ACT
(Adopted December 22, 2015)

7-1901 Citation.
7-1902 Purpose.
7-1903 Scope.
7-1904 Retaliation Prohibited.
7-1905 Reporting that is not Protected.
7-1906 False Claims.

7-1901 Citation. This Article shall be cited as the Settling Participant Brand Listing Act. [TCR 16-42]

7-1902 Purpose. This Article shall ensure that Settling Participants are in full compliance with all provisions of the Universal Tobacco Settlement Agreement. [TCR 16-42]

7-1903 Definitions.

1. "Cartoon" means any drawing or other depiction of an object, person, animal, creature or any similar caricature that uses comically exaggerated features or other anthropomorphic technique.
2. "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains any roll of tobacco wrapped in paper or in any substance not containing tobacco.
3. "Designated contact" is the person or entity designated by a party to this Agreement as the person or entity to receive any notice required under this Agreement and to communicate on a party's behalf.
4. "Indian Country" shall have the same definition as in 18 U.S.C. 1151.
5. "Minor" means any person under the age of 18.
6. "Quarter" means January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31.
7. "Settling Participant" means any cigarette manufacturer that manufactures cigarettes in Indian Country or a distributor that distributes such cigarettes in Indian Country, and has signed the Universal Tobacco Settlement Agreement and agrees to the bound by the provisions thereof.
8. "Settling Tribe" means a federally recognized Indian Tribe that has adopted and entered into the Universal Tobacco Settlement Agreement.
9. "Traditional Tobacco Use" means tobacco as used in a cultural, religious or historically significant manner within Settling Tribe's jurisdiction.
10. "Unit Sold" means an individual cigarette sold to a consumer within a respective Settling Tribe's jurisdiction and is manufactured and/or distributed by a Settling Participant. [TCR 16-42]

7-1904 Brand Listing.

1. Each Settling Participant under the Universal Tobacco Settlement Agreement shall provide the Settling Tribe's Designated Contact a list of brands that the Settling Participant intends to distribute within the Settling Tribe's jurisdiction. This list shall be provided contemporaneously with the Settling Participant's fourth quarterly payment of each year. The Settling Participant shall not sell brands other than those set forth in its brand listing approved pursuant to this section. Settling Participants may submit amended brand listings at any time for consideration by the Settling Tribe pursuant to the provisions of this section.
2. The Settling Participants who are manufactures of Units Sold shall submit their brand listing with the following accompaniments:

A. the Settling Participant's current Federal Trade Commission approval letter for all listed brands;
B. the Settling Participant's current Center For Disease Control certificate of compliance letter;
C. sufficient proof that the Settling Participant's cigarettes are made only with fire safe paper. If the current paper is the same paper as previously certified, a written statement as to this can be submitted in lieu of additional proof;
D. copy of its Alcohol and Tobacco Tax and Trade Bureau manufacturer license;
E. current sample packaging for each brand listed. If the current packaging is the same as packaging previously submitted, a written statement as to this can be submitted in lieu of packaging.

3. The Settling Participants who are distributors of Units Sold shall submit their brand listing with the following accompaniments:
   A. Copy of their tribal distributor license, if applicable;
   B. Certificate of corporate existence or similar proof of a legal existence from the jurisdiction in which the Settling Participant resides.
4. The Settling Tribe shall review the Settling Participant's submission made hereunder. The Settling Tribe shall notify in writing the Settling Participant regarding approval or disapproval of its submission. If the submission is complete under this section, and the Settling Participant is otherwise in compliance with terms of the Universal Tobacco Settlement Agreement and Tribal law, then the Settling Participant shall be approved to sell the brands listed in the submission. If the submission is not approved, the Settling Participant shall be given a reasonable opportunity to cure any deficiencies in its submission before any further action is taken regarding prohibition on sales.
5. Any Settling Participant's cigarette sold within the Settling Tribe's jurisdiction not contained on a Settling Participant's approved brand list shall be contraband and subject to seizure and forfeiture.
6. Failure to make the payments required under the Universal Tobacco Settlement Agreement Section IV will result in the automatic disapproval of a Settling Participant's brand listing and the removal of any brands currently listed.
7. Brands that had been previously approved but have been disapproved are not subject to seizure for 30 days until after their removal.
8. Manufacturers and distributors that have no payment obligations under the Universal Tobacco Settlement Agreement are not subject to these provisions. [TCR 16-42]

7-1905 Restrictions On Conduct.

1. Settling Participants are prohibited from engaging in the following activity:
   A. Prohibition On Minor Targeting. No Settling Participant may take any action to directly target minors within any Settling Tribe's jurisdiction. The Settling Participant may not take any action which the primary purpose is to initiate or increase the incidence of smoking by minors.
   B. Cartoon Advertising. No Settling Participant may use or cause to be used a cartoon in any advertisement, promotion, packaging or labeling.
   C. No Marketing As Traditional Tobacco. No Settling Participant may advertise, promote or otherwise market a cigarette in any manner that would tend to relate or associate the cigarette with Traditional Tobacco Use.
   D. Minimum Pack Size. No Settling Participant may ship, distribute or sell cigarettes in packs containing less than 20 cigarettes.

E. No Tribal Official Promotion. No Settling Participant may contract with or provide any remuneration or other value to an elected tribal official as part of any promotional or advertising scheme. [TCR 16-42]

7-1906 Enforcement Action. The Tribe may bring the appropriate civil enforcement action in Tribal Court to determine if a Settling Participant is violating this section. If the court determines that the Settling Participant is in violation of this section, the Court may provide injunctive relief to prevent further violation. Additionally, upon a finding by the Court that a Settling Participant is violating this section, the Tribe may remove any brand from the Settling Participants brand listing and may refuse listing until the Settling Participant has provided sufficient evidence to the Tribe to prove that the violation has been cured. [TCR 16-42]

TITLE 8
NATURAL RESOURCES
(Revised November 6, 2009)

SUMMARY OF CONTENTS

SECTION	ARTICLE-PAGE
1. TABLE OF REVISIONS	ii
2. TABLE OF CONTENTS	iii
3. WILDLIFE AND PARKS	1-1
• GENERAL PROVISIONS	1-1
• AGREEMENTS	1-3
• DEFINITIONS	1-4
• WILDLIFE AND PARKS COMMISSION REGULATIONS	1-7
• LICENSE INFORMATION	1-11
• WATERFOWL	1-13
• BIG GAME REGULATIONS	1-15
• RESTRICTIONS	1-17
• FIREARMS POLICY	1-20
4. WATER MANAGEMENT	2-1

TITLE 8
TABLE OF REVISIONS

The following table is included in this title as a guide for determining whether each article properly reflects the current version. This table will be updated with the revision of each article.

Through usage and supplementation, pages in bound titles can be inserted and removed when sections are revised on an article-by-article basis. This table should be placed before the Table of Contents in the title.

The "Article" column lists each article, and the "Section" column lists any corresponding sections that have been revised, in sequence. The "Revised Date" column reflects the effective date of the revision (e.g., "6/20/15"). If an article is not listed in the table, it has not been revised since the December 2015 Winnebago Tribal Code update and distribution.

Article	**Section**	**Revised Date**

TITLE 8
NATURAL RESOURCES
(Revised November 6, 2009)

ARTICLE 1
WILDLIFE AND PARKS
GENERAL PROVISIONS

8-101 Authority.
8-102 Policy.
8-103 Intent.
8-104 Effective Date.
8-105 Winnebago Wildlife and Parks Commission.
8-106 Name.

AGREEMENTS

8-107 Cooperative and reciprocal agreements.

DEFINITIONS

8-108 Definitions, interpretations.

WILDLIFE AND PARKS COMMISSION REGULATIONS

8-109 Regulations and statutes: contents.
8-110 Powers.
8-111 Officers' duties.
8-112 Search.
8-113 Authority to enter private land.
8-114 Seizure without warrant.
8-115 Forfeiture.
8-116 Civil liability.
8-117 Maximum penalties.
8-118 Non-game species.
8-119 Waiver provision.

LICENSE INFORMATION

8-120 Residency.
8-121 Application for a license.
8-122 Validating licenses.
8-123 License classes and fees.
8-124 Special permits.
8-125 Basic license requirements.
8-126 Number of licenses issued.
8-127 Season limitations.
8-128 Bag limits.
8-129 Lost licenses.
8-130 Revoked licenses.

WATERFOWL

8-131 Waterfowl regulations.
8-132 Restrictions.
8-133 Closed season.
8-134 Shooting or hawking hours.
8-135 Field possession limit.
8-136 Wanton waste.
8-137 Tagging.
8-138 Possession of live birds.
8-139 Dressing.
8-140 Shipment.
8-141 [Reserved.]

BIG GAME REGULATIONS

8-142 Shooting hours.
8-143 Firearms.
8-144 Bow and arrow.
8-145 Legal animals.
8-146 Non-licensees.
8-147 Tagging and transportation.
8-148 Hunter orange.
8-149 Big game hunting.

RESTRICTIONS

8-150 Restrictions.
8-151 Flagging.
8-152 Visible bait.
8-153 Raw furs.
8-154 Trap checking.
8-155 Live furbearers.
8-156 Fishing regulations.
8-157 Trespass.
8-158 Retrieval.
8-159 Harassment.
8-160 Livestock and fences.
8-161 Closed areas.
8-162 Motor vehicles.
8-163 Artificial light.
8-164 Inspection.
8-165 Threatened and endangered species.
8-166 Bobcats.

FIREARMS POLICY

8-167 Definitions.
8-168 Firearms policy.
8-169 Administration of firearms.
8-170 Firearms; record.
8-171 Initial qualification requirements.
8-172 Procedures when a firearm is used.
8-173 Responsibility of the Senior Conservation Officer.
8-174 Responsibility of the Department of Wildlife and Parks Supervisor.
8-175 Responsibility of the Chief Administrative Officer.
8-176 Medical standards.
8-177 Misconduct.
8-178 Special permits.

TITLE 8
ARTICLE 2
WATER MANAGEMENT
(Restated November 6, 2009)

8-201 Purposes.
8-202 Major actions.
8-203 Definitions.
8-204 Severability.
8-205 Composition of the committee.
8-206 Committee chairperson.
8-207 Committee meetings.
8-208 Duties.
8-209 Committee member provisions.
8-210 Listing of current uses.
8-211 Water resource information.
8-212 Public cooperation.
8-213 Declarations of new water use.
8-214 Inventory update.
8-215 Committee and administrator responsibilities.

TITLE 8
NATURAL RESOURCES
(Revised November 6, 2009)

ARTICLE I
WILDLIFE AND PARKS
GENERAL PROVISIONS

8-101 Authority.
8-102 Policy.
8-103 Intent.
8-104 Effective Date.
8-105 Winnebago Wildlife and Parks Commission.
8-106 Name.

8-101 Authority. This Wildlife and Parks Code is enacted pursuant to:

1. The Constitution of the Winnebago Tribe of Nebraska as approved by the Secretary of the Interior on April 3, 1936; and
2. All relevant treaties entered into by the Winnebago Tribe of Nebraska and the United States of America; and
3. Title 16, United States Code, section 3371 et seq.; the "Lacey Act Amendments;" and
4. Title 18, United States Code, section 1163, 1164 and 1165. [TCR 87-77]

8-102 Policy. The Winnebago Tribe has historically, through tradition, custom, and ordinance, regulated and controlled hunting and fishing on reservation lands in order to protect and enhance Tribal resources and to ensure that those rights guaranteed by the United States government shall survive and inure to the benefit of future generations. It is the policy of the Tribal Council, in furtherance of conservation of Tribal natural resources for present and future generations, to implement Tribal civil and regulatory jurisdiction over hunting, fishing and recreation activities on reservation lands, and to provide fair and equitable procedures for every person who engages in activities subject to this Article. All wildlife now and hereafter found within the exterior boundaries of the Winnebago Indian Reservation, not held by private ownership lawfully acquired, are hereby declared to be property of the Winnebago Tribe of Nebraska and no right, title, interest, or property therein can be acquired or transferred or possession thereof had or maintained except as expressly provided herein. This Code and its provisions are regulatory and civil in nature. Penalties and fines imposed thereby are intended as restitution for the depletion of natural resources, and to discourage conduct contrary to these regulations, which have been adopted as codifying the prudent management interests of the Tribe's natural resources. All prohibition established by this Code shall apply to and be enforced against all persons by civil enforcement procedure and by prosecution in the United States Courts. [TCR 87-77, 88-12, 93-84]

8-103 Intent. It shall be and is hereby established as the policy and intent of the Winnebago Wildlife and Parks Commission in conjunction with the Winnebago Tribal Council to establish the following:

1. To provide an adequate and flexible system for the protection and conservation of all Wildlife and Parks resources within the reservation of the Winnebago Tribe;
2. To provide for the establishment of rules, regulations and statutes relating to the harvest of Wildlife and Parks on the reservation of the Winnebago Tribe;
3. To provide for the general management and supervision of all wildlife and fishery activities on the reservation of the Winnebago Tribe;

4. To provide for the establishment of license requirements and to define prohibited acts and penalties in regard to wildlife and fishery activities on the reservation of the Winnebago Tribe. [TCR 87-77, 87-134, 93-84]

8-104 Effective Date. This Code supersedes all prior Codes regarding hunting and fishing, and shall become effective on the date of Tribal Council approval. [TCR 87-77]

8-105 Winnebago Wildlife and Parks Commission.

1. The Commission shall be appointed by the Tribal Council of the Winnebago Tribe of Nebraska. It shall be called the Winnebago Wildlife and Parks Commission. Said commission appointees shall serve for a three years' tenure. Said appointments shall be made by the Tribal Council and be made effective during the third week of October. Furthermore, said Commission shall consist of five Winnebago Tribal members, which include a chairman, vice-chairman, and secretary-treasurer. All officers shall be elected from within the commission membership.
2. Meetings: Any special meeting may be called at the discretion of the chairman or of a majority of other members of said commission should the necessity arise. The commission shall meet at least once every quarter, to conduct commission business, on a regular basis. Three members in attendance at a meeting shall constitute a quorum.
3. Vacancies: In the event that a vacancy should occur, the commission will recommend a new commissioner to serve for the remaining unexpired term. All such recommendations are subject to the approval of the Tribal Council.
4. Compensation of the members of said commission shall be set by the Tribal Council, to be paid out of the commission budget.
5. The lead Conservation Officer and professionals such as biologists or others with fish and/or wildlife expertise shall be hired/terminated or contracted by the commission as needed, subject to applicable contracting criteria as established by the Tribal Council. The lead Conservation Officer shall be responsible for hiring and supervising support staff and additional Conservation Officers as necessary to meet current needs of the department. Established Tribal personnel policies and procedures shall apply to all positions within the department. [TCR 05-02]
6. The commission shall submit an annual budget request to the Tribal Council. The Tribal Council shall allocate a commission budget. [TCR 87-77, 87-134, 88-91, 05-02]

8-106 Name. This Code of regulations and any additional statutory provisions pertaining to Wildlife and Parks adopted by the Tribal Council of the Winnebago Tribe shall be known as the Wildlife and Parks Code of the Winnebago Tribe and shall be enforced by the Tribal Court. [TCR 87-77, 88-91, 93-84, 05-02]

AGREEMENTS

8-107 Cooperative and reciprocal agreements.

8-107 Cooperative and reciprocal agreements. The Winnebago Wildlife and Parks Commission is hereby authorized, subject to the approval of the Winnebago Tribal Council, to enter into reciprocal and cooperative agreements with the State of Nebraska and any other governments or government agencies, federal or otherwise, for the purposes of promoting and implementing fishery and wildlife management programs. All such agreements will become part of the Wildlife and Parks Code. [TCR 87-77, 88-91]

DEFINITIONS

8-108 Definitions, interpretations.

8-108 Definitions, interpretations. The following terms, words, and definitions shall have the meaning so ascribed to them in the respective sections unless a different meaning clearly appears from the context:

1. "All-terrain vehicle" means any motorized vehicle designed for or capable of travel over unimproved terrain.
2. "Antlered" means any animal with visible antlers.
3. "Bag limit" means maximum number of a game species which may be legally taken per day and shall include maximum number of each sex.
4. "Bait" means any food item including but not limited to shelled or unshelled grains, shucked or unshucked grains, beans, alfalfa, hay, food supplements, salt, or any other item which entices or attracts game to a particular place.
5. "Bait fish" means any fish or minnow which is used for angling, or the capture or taking of fish.
6. "Baiting" means the act of putting out, scattering, or in other ways distributing bait for the purpose of attracting and taking any game animal or hunting with bait.
7. "Big game" shall be defined as wild turkeys, while-tailed deer, mule deer, antelope, moose, elk, and buffalo, for which harvest may be established by the Winnebago Tribe.
8. "Big game tag" means a tag issued with a big game permit which must be attached to the big game animal before transporting.
9. "Closed area" means any area where, by authority of the commission, hunting and trapping is prohibited and to which access or any other activities may not be allowed if signs so state in conspicuous places along access routes.
10. "Closed waters" means any lake, pond, river, stream, body of water, or any part thereof within the Winnebago Indian Reservation wherein it shall be unlawful to fish, hunt or trap. Said waters may be closed to one or all of these activities depending on the designation of these waters.
11. "Carcass" means the dead body of any wild animal to which it refers including the head, hair, skin, plumage, skeleton, or any other parts thereof.
12. "Cold water fishery" means any lake, pond, stream, creek or river or part thereof which is managed for trout, and where the use of live bait and baitfish is prohibited.
13. "Commission" means the Winnebago Wildlife and Parks Commission, otherwise known as the game commission.
14. "Creel limit" means the maximum number of any species of fish which may be legally taken per day.
15. "Fish" means any effort made to kill, injure, disturb, capture or otherwise possess fish in and from the waters of the Winnebago Indian Reservation.
16. "Furbearer" means animals which are taken primarily for their pelt.
17. "Game" means all wild animals and birds for which hunting seasons have been established by provisions contained within this Code.
18. "Game fish" means all species of sturgeon, salmon, trout, pike, catfish, bullheads, sunfish, bass, bluegill, crappies, perch, walleye, and sauger families of fish species.
19. "Hunt/trap" means any effort to kill, injure, capture or disturb any wild animal or wild bird as defined herein.
20. "License" means the primary document issued by the authority of the Winnebago Tribe which grants authority to engage in activities covered by the provisions of this Code.
21. "Live bait" means the use of any bait fish, amphibian, or any other animal while alive for angling.

22. "Loaded firearm" means a firearm is considered loaded if there is a shell in the chamber, shells in the receiver or magazine, if attached to the firearm.
23. "Member" means a person who is enrolled or is eligible for enrollment as a member of the Winnebago Tribe of Nebraska.
24. "Motor vehicle" means a motorized vehicle including any trailer or towed vehicle thereof which may travel on land, water, snow, ice or air.
25. "Non-antlered" means any animal not classified as antlered.
26. "Non-game species" means all species of birds and animals which are not listed or covered or provided for within the provisions of this Code and are protected.
27. "Non-Indian" means person who is not enrolled or eligible for enrollment as a member of a federally recognized Indian tribe.
28. "Non-member Indian" means any person who is enrolled or is eligible for enrollment as a member of a federally recognized Indian tribe other than the Winnebago Tribe of Nebraska.
29. "Non-resident" means person other than residents as defined in numbers (36) and (37) below.
30. "Officer" means a Conservation Officer or enforcement officer of the Winnebago Tribe or any other law enforcement officer of the Bureau of Indian Affairs, or the state, or the federal government.
31. "Open season" means the time specified by rule, regulation, order, resolution or statute of the Winnebago Tribal Council when it shall be lawful to hunt, fish or trap for any animals, birds or fish. Each period of said time shall be specified as an "open season" and limited to the period during each day when these activities can legally take place.
32. "Permit" means a secondary document including stamps, requiring a license as a prerequisite to its issuance, which grants authority to engage certain specified activities under the in provision of this Code, within the parameters of the Tribal rules and regulations governing these activities.
33. "Possession" means physical possession or control of any undomesticated fish, or game or non-game animal or parts thereof, on one's person, premises, motor vehicle, or public or private place of processing or storage.
34. "Possession limit" means maximum number of game species which may be possessed.
35. "Predator" means animals which kill and eat flesh of other animals.
36. "Recreational vehicle" means any snowmobile or all-terrain vehicle engaged in off highway recreational use.
37. "Reservation" means all territory within the exterior boundaries of the Winnebago Reservation (including Flowers Island and other Tribal land located east of the Missouri River) as set forth in the Winnebago Treaty of March 8, 1865 (14 Stat. 671) and the twenty sections included in the strip purchased in Nebraska for Wisconsin Winnebagos (18 Stat. 170), June 22,1874 and such lands as may be added thereto by Congress or the Tribe or reaffirmation of the title to lands through the Courts to the Tribe, except as otherwise provided by law. This definition of Reservation includes all rights-of-way, waterways, streams, lakes, highways, railroad rights of way, mineral rights, etc.
38. "Resident of the reservation" means a person whose domicile is within the Winnebago Indian Reservation.
39. "Resident of Nebraska" means a person whose domicile is within the state of Nebraska.
40. "Restricted water or trout water" means that fishing methods of any lake, pond, stream or any part thereof may be limited to the use of artificial lures or bait other than live fish.
41. "Rough fish" means all fish species not included in the game fish families.
42. "Seasons" means all of the time during the entire year except during the "open season" as specified by regulation or ordinance of the commission and the Winnebago Tribal Council.
43. "Sell" means to offer or possess for sale, barter, exchange or trade or the act of selling, bartering, exchanging or trading.
44. "Small game" shall be defined as including the following: rails, snipe, woodcock, sharp tailed grouse, prairie chicken, bobwhite, ring-necked pheasant, gray partridge, mourning dove,

cottontail rabbit, eastern fox squirrel, and gray squirrel. Small game does not include wild turkeys or water fowl.

45. "Snagging" means the use of hooks or hooks and line with or without a pole, to impale or attempt to impale fish in a manner other than natural feeding behavior of fish.
46. "Snowmobile" means any motorized vehicle designed for travel on snow and/or ice and is steered and supported in whole or in part by skis, belts, cleats, runners, tracks, or low pressure tires.
47. "Specified areas" means areas where the taking of game animals is restricted to the specifications set forth by rules, regulations, statutes, or resolutions set forth by the commission in conjunction with the Winnebago Tribal Council.
48. "State" means the state of Nebraska and/or Iowa.
49. "Tag" means a card, label or other identification device issued for attachment to the carcass of any game animal.
50. "Take" means to fish, angle, hunt, pursue, catch, capture, seine, trap, kill, or otherwise possess any wildlife or any attempt to commit any of these acts.
51. "Tribe" means the Winnebago Tribe of Nebraska.
52. "Tribal Court" means Winnebago Tribal Court.
53. "Trot line" means any line used for fishing with one or more hooks which is not used with a conventional rod and reel and is left unattended which shall include but not be limited to the terms throw line, set line, or limb line.
54. "Unprotected species" means those species of birds and animals which are not protected under the provisions of this Code or federal law, and for which year round hunting is allowed.
55. "Waterfowl" means any wild geese, brants, coots, or wild ducks.
56. "Wildlife" means any form of animal life generally living wild in a state of nature, endowed with sensation and the power of voluntary motion, including all wild mammals, birds, fish, reptiles, amphibians and their eggs, nests and spawn, or any animals, birds, or fish. [TCR 87-77, 87-134, 88-91, 92-19, 93-84, 10-17]

WILDLIFE AND PARKS COMMISSION REGULATIONS

8-109 Regulations and statutes: contents.
8-110 Powers.
8-111 Officers' duties.
8-112 Search.
8-113 Authority to enter private land.
8-114 Seizure without warrant.
8-115 Forfeiture.
8-116 Civil liability.
8-117 Maximum penalties.
8-118 Non-game species.
8-119 Waiver provision.

8-109 Regulations and statutes: contents. The Wildlife and Parks Commission may from time to time recommend to the Winnebago Tribal Council for the adoption, amendment, promulgation, or repeal of such regulations and statutory provisions as are consistent with the policy, objectives and intent of this Code as it may deem necessary or desirable in the public interest in carrying out the policy and provisions of this Code. Those hunting and fishing seasons currently in effect shall remain in effect until changed as provided for herein. The Wildlife and Parks Commission must, on or before the first day of September of each year, post in conspicuous places within the reservation notices stating the limitations as to seasons, bag limits and any moratoriums. A copy of said notice shall be provided to every person upon the issuance of a Tribal license or permit. [TCR 87-77, 93-84]

8-110 Powers. Such regulations and statutory provisions shall, without limiting the general powers herein conferred, include the following:

1. To fix seasons, and shorten, extend or close seasons on any species of wildlife in any specific locality or localities on the entire reservation, when it shall be found, after investigation, that such action is necessary either to insure maintenance of an adequate supply thereof, to regulate taking, to effectuate proper game management and control, or otherwise to be in the public interest of the Winnebago Tribe.
2. To close or open lakes, streams, and refuges or parts thereof to angling, trapping, or hunting, and to regulate and prescribe the means by which wildlife may be taken as may be best to perpetuate, restore, increase or control any species of wildlife and assure an adequate supply thereof, and regulate the transportation and storage of all wildlife or parts thereof within the boundaries of the Winnebago Indian reservation and the development or transportation off the Winnebago Indian reservation.
3. To establish or change bag limits and possession limits.
4. To establish and change territorial limits for taking of all species of wildlife.
5. To prescribe the types of or kinds of bait, lures, tackle, equipment, traps, firearms and weapons, the tagging of game or fish or parts thereof or any other means or device for taking of such wildlife.
6. To designate the areas for hunting with bow and arrow and seasons thereof.
7. To establish big game, small game, fish, waterfowl and/or forbearing animal refuges, production areas, demonstration areas, and research areas. When private property is to be included in one of the above, consent of the owner must first be obtained. Boundary lines may be posted at the usual place of ingress with signs bearing instructions and title of the commission of the Winnebago Tribe, in such a way that a person entering by such ingress shall be placed on notice that he/she is within the jurisdiction of the Winnebago Tribe.
8. To establish methods for checking hunters, fishermen, or trappers onto and out of designated areas, to prescribe safety and fire control measures and other regulations as may be deemed necessary in the interest of range, forest, wildlife, fish or forbearing animal management, and for the safety and welfare of hunters, trappers, fishermen, landowners and the Winnebago Tribe.
9. To establish fees and license costs for hunting seasons, general, special or otherwise,

10. To establish rules and regulations governing the operation of boats upon waters located within the exterior boundaries of the Winnebago Indian reservation.
11. To establish rules and regulations governing the operation of snowmobiles and other all-terrain recreational vehicles on the lands of the Winnebago Tribe, which shall also include aircraft.
12. To establish fees and license costs for issuing Commercial Fishing Licenses to Winnebago Tribal members. [TCR 87-77, 93-84, 10-17]

8-111 Officers' duties. It shall be the duty of the Tribal Conservation Officers to enforce the rules, regulations, and statutory provisions promulgated hereunder relating to hunting and fishing, trapping and all other regulations which may relate to all activities pursuant to the policy and intent of this Code and such officers may issue citations and bring before the proper Court any persons violating the provisions of this Code or any of the regulations, statutory provisions or rules adopted thereto pertaining to the policy, intent and purposes of this Code.

1. Upon the filing of a complaint, it shall be the duty of such officer to render assistance in the prosecution of the party complained against in the Winnebago Tribal Court.
2. All certified Conservation Officers and enforcement officers shall have the right to carry side arms upon their person; they shall be Courteous at all times; they shall not, at any time, partake of, or consume, illegal drugs or intoxicating liquor while on duty; they shall have the right to demand of all persons, hunting, fishing, or trapping on the reservation to display their Tribal license or permit for hunting, fishing, or trapping and sufficient personal identification for the purpose of enforcing the provisions of this Code.
3. Drinking of intoxicating beverages, or use of illegal drugs by the Tribal Conservation Officer or enforcement officer while on duty, shall be cause for immediate discharge from his/her position.
4. Each Tribal Conservation Officer shall act as an enforcement officer on the reservation, and may seek and request assistance from all federal and state officials, county sheriffs, and Bureau of Indian Affairs officers.
5. Each Tribal Conservation Officer shall keep an accurate daily log and record, setting out their activities as such Conservation Officers and enforcement officers for each day, and shall deliver the same to the Wildlife and Parks Commission or its designee prior to receiving their salary.
6. It shall be the duty of each Tribal Conservation Officer or enforcement officer on the reservation to issue a citation and summons to any person who he/she has probable cause to believe guilty of a violation of the provisions of this Code, and with or without a warrant, to open, enter, and examine all camps, wagons, cars, stables, barns, tents, and other places where he/she has reason to believe any fish or game taken in violation of this Code are to be found, and to confiscate the same; provided , a dwelling house on the reservation actually occupied, can be entered only upon authority of a search warrant. [TCR 87-77, 93- 84]

8-112 Search. A Tribal Conservation Officer may, without warrant but with probable cause, search any conveyance, vehicle, game bag, or any package, box, hunting camp or a similar place where he/she has reasonable belief that any animal has been killed or captured by the subject person within the reservation or any such animal has been brought onto the reservation, whether or not at the time the search was made he/she possesses actual knowledge or evidence that a violation of this Code, regulations, ordinances or rules adopted hereunder has occurred pertaining to hunting, fishing, or trapping. Any person who purchases a license from the Wildlife and Parks Commission who enters the reservation or who possesses any such dead or captured animal shall be deemed to have consented to such a search. [TCR 87-77, 10-17]

8-113 Authority to enter private land. Any officer, in the course of his/her duty, may enter upon any land or waters of the Winnebago Indian reservation and remain thereon while performing such duties hereunder, and such actions by such officers shall not constitute trespass. For the purpose of this Article, probable cause for seizure, the Tribal officer must find that:

1. The seizure is directly necessary to secure an important Tribal interest in preserving reservation wildlife, property and public safety from injury; or
2. There is a special need for prompt action because it is likely that persons and objects used by him/her to violate these statutory provisions will leave the reservation and not return. [TCR 87-77, 93-84]

8-114 Seizure without warrant. Any officer may, upon probable cause, seize without warrant, all birds, animals, or parts thereof taken, killed, transported, or possessed, contrary to the provisions of this Code or any regulation, rule or ordinance pertaining to hunting, fishing or trapping, and may seize without warrant, bows, guns, traps, nets, seines, decoys, boats, lights, fishing tackle, cars, trucks, ATVs, or such other device unlawfully used for hunting, fishing or trapping. Such officer shall issue a receipt to the person in possession of the items seized stating time, place, date, items seized, where such items will be held, and the name of the officer seizing said items. [TCR 87-77, 10-17]

8-115 Forfeiture.

1. Any property seized shall be subject to forfeiture at the order of the Tribal Court of the Winnebago Tribe after no less than fifteen days' notice and opportunity for hearing or trial as herewith set forth. In case it appears upon the sworn complaint of the officer making the seizures that any articles seized were not in the possession of any person, and that the owner thereof is unknown, the Court shall have the power and jurisdiction to forfeit such articles unknown by publishing such summons in any newspaper of general circulation in Thurston county for a period of two successive issues. The summons shall describe the articles seized and shall give the owner fifteen days from the date of publication to appear before the Tribal Court and contest the forfeiture. Any perishables seized may, in the interest of the public health, be donated to a local non-profit organization.
2. If it is determined that a violation of these statutory provisions is by a non-Indian and/or non-member Indian, and if it is determined that such alleged act or omission violates 18 U.S.C. section 1135 or other relevant law, such person and the related evidence may be taken before the appropriate federal authorities at the earliest opportunity for prosecution under the relevant federal laws. Such action may be in addition to Tribal remedies and civil penalties available under Tribal law.
3. In the event that the Tribal Court orders forfeiture of any article seized, such article shall be sold at auction with proceeds going to the Wildlife and Parks Department. If any articles are not declared forfeited by the order of the Tribal Court, they shall be returned to the person from whom seized upon satisfaction of any and all civil penalties, liquidated damages and costs. After the completion of the case and, if civil penalties and liquidated damages that are assessed by the Court are not paid within a period of time to be established by the Court, the Court may dispose of said property as described above.
4. In the event that final judgment dismisses the allegations against the alleged offender, all items seized shall be returned to the owner or person from whom taken.
5. If the offender is unable to pay any judgment levied against him/her, then the Tribal Court may order the forfeiture of any article lawfully seized, and have the profits therefrom applied to the amount owed to the Court. Any surplus shall be paid to the offender and any deficiency shall be an enforceable judgment through attachment, garnishment or other remedy available to the Tribe.

6. The Tribal Court shall be the recipient of all Court costs assessed and collected under this Code. The proceeds of any fines, judgments, or forfeitures assessed and collected by the Court in excess of such Court costs shall be paid by the Court to the Wildlife and Parks Commission to be used in carrying out its duties and obligations of the intents and purposes of this Code. [TCR 87-77, 88-91, 89-84, 93-84, 10-17]

8-116 Civil liability. Upon judgment entered in Tribal Court where the defendant has illegally taken, killed, or possessed any species of fish or wildlife, the defendant shall be liable for liquidated damages. In addition, the Tribal Court may impose the following additional remedies:

1. Forfeiture of weapons and gear used in violating these statutory provisions; and/or
2. Revocation of all Tribal hunting and fishing permits and licenses; and/or
3. Injunction against the issuance by the Tribe of any additional permits or licenses to the offender for up to five years; and/or
4. Payment of the costs for the Tribal Court proceeding. [TCR 87-77, 88-91, 93-84]

8-117 Maximum penalties. Any person who violates any provision of this Article not otherwise subject to a specific penalty provision shall be subject to a minimum penalty of $100 and a maximum penalty of $1,000.00 and/or loss of license. HUNTING, FISHING, TRAPPING without a proper and current Tribal license shall subject the defendant to, the following schedule of maximum penalties:

BIG GAME

Deer

130 Class and Below	$1500.00
For above 130 Class	$1500.00 plus $10 per inch

[TCR 87-77, 88-91, 10-17]

8-118 Non-game species. All non-game species will have a minimum value of one hundred dollars ($100.00) and a maximum value of five hundred dollars ($500). Specific penalties for non-game species may be established by regulation of the Winnebago Tribal Wildlife and Parks Commission. [TCR 87-77, 88-91, 10-17]

8-119 Waiver provision. At any point prior to entry of judgment in any civil proceeding initiated under this Wildlife and Parks Code, a violator may pay to a Conservation Officer or the Tribal Court the civil fine established by the Code for the violation at issue, plus any Court costs which may have accrued. Said payment shall constitute an admission to the violation. Upon receipt of such payment, all confiscated property shall be returned to the individual. Thereupon, the Conservation Officer who participated in the initial action shall cause a notice of dismissal to be filed in the Tribal Court pursuant to the Winnebago Rules of Civil Procedure. [TCR 87-134, 88-91, 10-17]

LICENSE INFORMATION

8-120 Residency.
8-121 Application for a license.
8-122 Validating licenses.
8-123 License classes and fees.
8-124 Special permits.
8-125 Basic license requirements.
8-126 Number of licenses issued.
8-127 Season limitations.
8-128 Bag limits.
8-129 Lost licenses.
8-130 Revoked licenses.

8-120 Residency. There is no residency requirement to purchase a license pursuant to this Code. [TCR 87-77]

8-121 Application for a license. Application for a license is made to the Winnebago Wildlife and Parks Commission. The licensee, as part of the application, must attest that he/she has read, understands and agrees to abide by all provisions of this Code. Only one license of any type may be purchased. [TCR 87-77]

8-122 Validating licenses. A licensee must sign his/her name in ink on each license to validate the license. Licenses are non-transferable and must be in the licensee's possession while hunting, fishing or trapping. A licensee must display his/her license upon demand of any Conservation Officer or other law enforcement officer. [TCR 87-77, 10-17]

8-123 License classes and fees.

1. Licenses: Licenses to HUNT, TRAP, and/or FISH, under this Code, are hereby classified as follows:
   A. CLASS A-1 licenses to hunt, trap, or fish, shall be issued to Winnebago Tribal members (whether resident or non-resident).
   B. CLASS A-2 licenses to Hunt, Trap, or Fish, shall be issued to non-Indians.
   C. CLASS A-3 licenses to hunt, trap, or fish, shall be issued to non-member Indians.
2. License Fees: License fees shall be established annually by the Winnebago Wildlife and Parks Commission, and paid to said commission or its designee. Senior Citizens (age fifty five and older) who are members of the Winnebago Tribe shall be issued CLASS A-1 licenses free of charge.
3. Commercial Fishing Licenses: Commercial Fishing Licenses shall be available only to Winnebago Tribal members and shall only be granted upon a three (3) signature approval from the Commission. [TCR 87-77, 87-134, 88-91, 10-17]

8-124 Special permits. Special permits may be issued at the discretion of the Wildlife and Parks Commission for taking certain species for ceremonial or traditional purposes. Each special permit shall be limited to the taking of a single member of the species for which the permit was granted. Federal application forms for the acquisition of eagle parts from the federal government may be obtained from the Winnebago Wildlife and Parks Commission. [TCR 87-77, 87-134, 88-91]

8-125 Basic license requirements. The license to hunt is a prerequisite to all hunting, fishing, and trapping.

1. No license can be issued to any person under twelve years of age.

2. A license to hunt may be issued to a person under the age of sixteen provided he/she is accompanied by a parent, guardian, or responsible adult when hunting or has successfully completed a firearms safety course when applying for a license.
3. Persons under the age of sixteen may fish without a license. [TCR 87-77, 88-91, 10-17]

8-126 Number of licenses issued. Limitations as to the number of licenses issued in each class of license shall be determined annually by the Wildlife and Parks Commission. [TCR 87-77, 88-91]

8-127 Season limitations. Limitations as to seasons shall be established annually by the Winnebago Wildlife and Parks Commission. All hunting, trapping, and fishing seasons shall be closed except as opened by the Wildlife and Parks Commission. Moratoriums on the taking of specific species may be established annually by the Wildlife and Parks Commission. [TCR 87-77, 88-91]

8-128 Bag limits. No person shall take more than one daily bag limit on any one day. Daily bag limits shall be determined annually by the Wildlife and Parks Commission. [TCR 87-77, 88-91]

8-129 Lost licenses. Lost licenses may be replaced by the Wildlife and Parks Commission. [TCR 87-77, 88-91]

8-130 Revoked licenses. In any case where a person is convicted of violating any provision of this Code punishable by a fine of more than one hundred dollars ($100.00), or of violating any other rule or regulation promulgated pursuant to this Code, including but not limited to hunting, trapping, fishing or possessing wildlife without a license or during a closed season, the Court may revoke said person's hunting, trapping, or fishing privileges for up to five years following such conviction. [TCR 87-77, 88-91]

WATERFOWL

8-131 Waterfowl regulations.
8-132 Restrictions.
8-133 Closed season.
8-134 Shooting or hawking hours.
8-135 Field possession limit.
8-136 Wanton waste.
8-137 Tagging.
8-138 Possession of live birds.
8-139 Dressing.
8-140 Shipment.
8-141 [Reserved.]

8-131 Waterfowl regulations. Migratory waterfowl seasons and regulations will be established by the Wildlife and Parks Commission. In addition to Tribal regulation, all federal rules apply to taking, possessing, transporting and storing of migratory game birds. [TCR 87-77]

8-132 Restrictions. No person shall take migratory game birds:

1. With a trap, snare, net, crossbow, rifle, pistol, swivel gun, shotgun larger than a ten gauge, punt gun, battery gun, machine gun, fish-hook, poison drug, explosive, or stupefying substance.
2. With a shotgun capable of holding more than three shells.
3. From a sink box, a low-floating device having a depression affording the hunter a means of concealment beneath the surface of the water.
4. From or with the aid or use of a car or other motor-driven land conveyance, or any aircraft.
5. From or by means of any motorboat or sailboat unless the motor has been stopped and/or the sail unfurled.
6. By use or aid of live decoys.
7. Using records or tapes of migratory bird calls, or sounds or electronically amplified imitations of bird calls.
8. By driving, rally, or chasing birds with any motorized conveyance or any sailboat to put them in the range of hunters.
9. By the aid of baiting (placing feed such as corn, wheat, salt, or other feed to constitute a lure or enticement). Hunters should be aware that a baited area is considered to be baited for ten days after the removal of the bait, and it is necessary for the hunter to know an area is baited to be in violation. [TCR 87-77]

8-133 Closed season. No person shall take migratory game birds during the closed season. [TCR 87-77]

8-134 Shooting or hawking hours. No person shall take migratory game birds except during the hours open to shooting and hawking (falconry as prescribed). [TCR 87-77]

8-135 Field possession limit. No person shall possess more than one daily bag limit while in the field, or while returning from the field to one's car, hunting camp, home, etc. [TCR 87-77]

8-136 Wanton waste. All migratory game birds shall be-retrieved, if possible, and retained in the custody of the hunter in the field. [TCR 87-77]

8-137 Tagging. No person shall give, put or leave any migratory bird at any place or in the custody of another person unless the birds are tagged by the hunter with the following information:

1. The hunter's signature.
2. The hunter's address.
3. The total number of birds involved, by species.
4. The dates and locations such birds were killed.

Tagging is required if the birds are being transported by another person for the hunter, or if the birds have been left for cleaning, storage (including temporary storage), shipment, or taxidermy services. [TCR 87-77]

8-138 Possession of live birds. Crippled birds must be immediately killed. [TCR 87-77]

8-139 Dressing. No person shall completely dress any game bird (except doves) and then transport the birds from the field to one's home or to a commercial preservation facility. [TCR 87-77]

8-140 Shipment. No person shall ship migratory game birds unless the package is marked on the outside with:

1. The name and address of the person sending the birds;
2. The name and address of the person to whom the birds are being sent;
3. The number of birds, by species, contained in the package;
4. The dates and locations such birds were killed. [TCR 87-77]

8-141 [Reserved.] [TCR 10-17]

BIG GAME REGULATIONS

8-142 Shooting hours.
8-143 Firearms.
8-144 Bow and arrow.
8-145 Legal animals.
8-146 Non-licensees.
8-147 Tagging and transportation.
8-148 Hunter orange.
8-149 Big game hunting.

8-142 Shooting hours. One-half hour before sunrise to one-half hour after sunset. [TCR 87-77]

8-143 Firearms. No auto-loading firearm that is capable of holding more than six cartridges nor any firearm that is capable of being operated as a fully automatic may be used.

1. It is prohibited to use any firearm of .22 caliber or less in the hunting of big game or waterfowl.
2. Muzzle-loading rifles must be .44 caliber or larger. Shotguns must discharge a single ball or rifled slug weighing at least one-half ounce. Buckshot may not be used. [TCR 87-77]

8-144 Bow and arrow. Minimum bow pull is forty pounds, and bow must be able to shoot an arrow one hundred twenty five yards. Cutting edge of the arrowhead must be of steel and not less than seven eighths of an inch long. The shaft of the arrow must be at least twenty four inches long. Explosives, poisonous and barbed points, and crossbows are illegal. [TCR 87-77]

8-145 Legal animals. The following definitions apply to big game:

1. Big game includes wild turkeys, white-tailed deer, mule deer, antelope, elk, buffalo and moose.
2. Buck or bull means a male animal with a visible antler.
3. Antlerless means an animal of either sex without a visible antler. [TCR 87-77]

8-146 Non-licensees. No big game licensee hunting in the field during any big game season shall be accompanied by a non-licensee carrying any firearm or bow and arrow. A non-licensee is a person not having a big game license for the same season and unit as the licensee. [TCR 87-77]

8-147 Tagging and transportation. The seal issued with each license must be signed, dated and securely attached to the animal as provided in the instructions on the seal at the time the game is brought to a road or into any hunting camp, farmyard, dwelling, or place of abode, or before the game is placed in or on a vehicle.

1. Tagging allows a big game animal to be transported or stored by the hunter or by another person for the hunter.
2. To transport parts of a big game animal, a free transportation and shipping permit must be obtained from the Wildlife and Parks Commission or Conservation Officer for those parts not accompanied by the tag.
3. No person shall transport or possess any big game animal without the accompaniment of the animal's head and hide (to promptly identify species and sex) unless he/she has a receipt from a licensed taxidermist or a free transportation and shipping permit obtained from the Wildlife and Parks Commission or Conservation Officer. [TCR 87-77]

8-148 Hunter orange. Any person hunting big game, other than wild turkeys, with a firearm or bow and arrow, shall display on his/her chest and back a garment of bright orange or red material covering at least two thirds of his/her torso. [TCR 87-77, 88-91]

8-149 Big game hunting. The Wildlife and Parks Commission shall set the big game hunting regulations and seasons.

1. The Wildlife and Parks Commission shall, at its discretion, and upon application of any member or members of the Tribe of Winnebago Indians, have the right to grant a special permit to take or kill a big game in the off-season.
2. It shall be unlawful to chase, run, or harass any big game with a motor vehicle of any kind, or to shoot, shoot at, take or attempt to take any big game from a motor vehicle while it is under way or moving, or to use a spotlight or other artificial lighting device.
3. All big game hunters, other than those licensed for and hunting wild turkeys, shall wear a bright orange or red outer garment and failure to comply with this regulation, shall constitute a violation under this Code.
4. Hunters shall observe the hours set forth by the Wildlife and Parks Commission which are set as follows: hunting permitted only from one-half hour prior to sunrise to one-half hour after sunset.
5. Any big game accidentally hit and killed by a motorized vehicle must be reported to the Wildlife and Parks Commission, Conservation Officer, or other enforcement officers within twenty four hours. [TCR 87-77, 87-134, 88-91, 10-17]

RESTRICTIONS

8-150 Restrictions.
8-151 Flagging.
8-152 Visible bait.
8-153 Raw furs.
8-154 Trap checking.
8-155 Live furbearers.
8-156 Fishing regulations.
8-157 Trespass.
8-158 Retrieval.
8-159 Harassment.
8-160 Livestock and fences.
8-161 Closed areas.
8-162 Motor vehicles.
8-163 Artificial light.
8-164 Inspection.
8-165 Threatened and endangered species.
8-166 Bobcats.

8-150 Restrictions. No person shall:

1. Possess a firearm in the field while hunting with a bow and arrow during the season restricted to archery.
2. Use dogs to hunt big game.
3. Use salt blocks or licks to lure or attract big game.
4. Use any artificial light to take big game or use artificial light in big game areas while in possession of a firearm or bow and arrow.
5. Hunt big game by methods other than with a firearm or bow and arrow.
6. Hunt in groups numbering more than ten persons.
7. Sell or barter big game except for head, hide or horns.
8. Discharge a firearm or other implement with which a big game animal could be killed from a motor vehicle or any other means of transportation during a time and in a place that big game hunting is being permitted.
9. Set or operate more than seventy five traps at any one time.
10. Dig, disturb, or molest any mink den or beaver house for the purpose of capturing any of these animals, or use poisonous, gas or smoke to kill or capture any of these animals.
11. Destroy any muskrat house, except that in open season such house may be opened in a manner that will not destroy, damage, or injure it as a place of habitation.
12. Take game in any manner other than by shooting them with a firearm, by handgun, by bow and arrow or by birds trained in falconry.
13. Sell or barter game birds and animals except for skin, head or horns on big game, skin or plumage of pheasants and furbearers.
14. Wantonly waste or destroy any game bird or animal.
15. Kill non-game birds, except the English sparrow and European starling.
16. Kill, or take fish or wildlife at any time except during open seasons established by the Wildlife and Parks Commission or by special permit from the Wildlife and Parks Commission.
17. If under the age of sixteen, carry a gun and hunt unless having successfully completed a firearm safety course or being accompanied by one adult for each child carrying a gun.
18. Take game fish by the use of net or seine.
19. Hunt, trap or fish on any part of the Winnebago Tribal reservation without first obtaining a Winnebago Tribal permit or license.
20. Be intoxicated while hunting or fishing on the reservation; and any person found intoxicated on the reservation while hunting or fishing shall be charged and prosecuted for such violation.
21. Take or attempt to take any wildlife by means of using a snare. [TCR 87-77, 88-91, 10-17]

8-151 Flagging. No person shall flag, mark or otherwise attempt to claim any specific place or area for hunting, trapping or fishing purposes. [TCR 87-77, 88-91]

8-152 Visible bait. No person shall set any trap within thirty feet of any exposed bait visible to airborne raptors. Exposed bait means bodies**,** meat or viscera of any animal bird or fish with or without skin, hide or feathers. [TCR 87-77]

8-153 Raw furs. The raw furs of animals legally trapped may be possessed after the close of the season, provided all furs are checked with a Conservation Officer within ten days after the close of the season. [TCR 87-77, 10-17]

8-154 Trap checking. Trappers must check all traps at least every twenty four hours. [TCR 87-77]

8-155 Live furbearers. Live furbearers may not be altered physically, bartered or possessed except one family of live furbearers per household may be kept as pets. [TCR 87-77]

8-156 Fishing regulations. Limits on the taking of game fish shall be established by the Wildlife and Parks Commission annually. There are no limits on the number of rough fish that may be taken. The limit for paddlefish is one per day. Any paddlefish snagged must be counted as the daily limit. Fish may not be sold or caught with any type of net without a commercial fishing license issued by the Wildlife and Parks Commission. It is unlawful to use any explosives in the taking of fish. [TCR 87-77, 88-91]

8-157 Trespass. Except as otherwise provided in **S**ection 8-158, no person shall trespass on any private or allotted lands within the exterior boundaries of the Winnebago reservation without permission from the owner. [TCR 87-77, 88-91]

8-158 Retrieval. Any person may retrieve lawfully taken small and big game from private, deeded or allotted land if you do not use a vehicle to make your retrieval. Remember, to be lawfully taken, game must have been shot within open areas or areas where permission has been granted. [TCR 87-77, 88-91]

8-159 Harassment. No person may intentionally interfere with persons lawfully engaged in taking or attempting to take game or fish. No person may scare or disturb game with specific intent to prevent lawful taking. [TCR 87-77, 88-91]

8-160 Livestock and fences. No livestock, fences, or other property belonging to the Tribe, landowner, or lessee may be damaged or disturbed in any manner. [TCR 87-77, 88-91]

8-161 Closed areas. No person shall hunt or trap on roads or road right-of-ways or other areas designated as closed by the Wildlife and Parks Commission. [TCR 87-77, 88-91]

8-162 Motor vehicles. No person shall:

1. Operate motor propelled vehicles on the Winnebago reservation except on designated wheeled motor vehicle roads and trails. An additional penalty of up to $500 for such operation shall be assessed.
2. Discharge any firearm at any wild animal while in or on a motor vehicle or any conveyance attached to it when the vehicle is on a public highway. Paraplegics who are licensed hunters and have a special permit from the Wildlife and Parks Commission may shoot from a standing vehicle.
3. Use a motor vehicle to chase, harass, intercept, pursue or otherwise disturb arty big game, small game or migratory waterfowl.
4. Use an aircraft to hunt, take, concentrate, drive, stir up, locate or spot any game.

5. Allow any firearm to protrude from any motor vehicle or any conveyance attached to it on any public highway during any hunting season.
6. Have any firearm in possession while riding in or on or while operating a motor vehicle unless the firearm is completely unloaded. This provision shall not apply to authorized law enforcement or Conservation Officers.
7. Send or receive any message by radio to make it easier to take big game, small game or migratory waterfowl. [TCR 87-77, 88- 91, 89-84, 10-17]

8-163 Artificial light. No person shall hunt any game or wild animal with the aid or use of artificial light except raccoons, which may be hunted with artificial light only when the hunter is not in or on a motorized vehicle. [TCR 87-77, 88-91]

8-164 Inspection. No person shall refuse to permit inspection and count of game. Any motor vehicle, camper, or trailer may be stopped for such inspection and count. [TCR 87-77, 88-91]

8-165 Threatened and endangered species. No person shall take, possess, transport, export, process, sell or offer for sale, buy or offer to buy, nor shall a common or contract carrier transport or receive for shipment any species of threatened or endangered wildlife or plants indigenous to the Winnebago reservation or determined to be endangered or threatened within the Winnebago reservation. For complete listing, write to: Winnebago Tribal Wildlife and Parks Commission, Winnebago, Nebraska, 68071. [TCR 87-77, 87-134, 88-91, 10-17]

8-166 Bobcats. Bobcats will be managed separately from all other species by the Winnebago Wildlife and Parks Commission. A bobcat management plan will set season dates if any, limits, and possession numbers. Special restrictions may apply to bobcats. [TCR 87-77, 88-91]

FIREARMS POLICY

8-167 Definitions.
8-168 Firearms policy.
8-169 Administration of firearms.
8-170 Firearms; record.
8-171 Initial qualification requirements.
8-172 Procedures when a firearm is used.
8-173 Responsibility of the Senior Conservation Officer.
8-174 Responsibility of the Department of Wildlife and Parks Supervisor.
8-175 Responsibility of the Chief Administrative Officer.
8-176 Medical standards.
8-177 Misconduct.
8-178 Special permits.

8-167 Definitions.

1. "Certified instructor" shall mean an individual trained and certified by the Bureau of Indian Affairs as qualified to train and test in the standards required by the agency.
2. "Physical Efficiency Battery" (PEB) is defined as a series of tests approved by the Bureau of Indian Affairs Law Enforcement designed to measure physical proficiency. [TCR 96-74]

8-168 Firearms policy. It is the policy of the Winnebago Tribe of Nebraska, Department of Wildlife and Parks that all Tribal Conservation Officers may be authorized to carry sidearms for their safety and protection. Tribal Conservation Officers may be authorized to carry firearms during official duty hours or marksmanship training. All Tribal Conservation Officers will utilize department issued firearms. Any firearm that is capable of being operated as a fully automatic weapon is prohibited. Authorized firearms for Tribal Conservation Officers are:

1. Handgun. Winnebago Tribal Conservation Officers shall be issued handguns and ammunition approved by the Supervisor, Department of Wildlife and Parks and the Bureau of Indian Affairs Law Enforcement supervising officer. The use of any other types of handguns other than that authorized is prohibited. The barrel length may not be more than four inches or less than four inches.
2. Rifle. Winnebago Tribal Conservation Officers shall use the Department of Wildlife and Parks' .22 magnum rifle, for the purpose of harvesting small game species for special permits or to destroy a seriously injured or dangerous animal.
3. 12 gauge shotgun. Winnebago Tribal Conservation Officers shall use the Department of Wildlife and Parks' 12 gauge shotgun capable of holding no more than six (6)cartridges. The 12 gauge shotgun will be authorized only for harvesting upland bird, turkey and waterfowl species for special permits. [TCR 96-74, 10-17]

8-169 Administration of firearms. The firearms policy shall be administered by the Supervisor of the Wildlife and Parks Department. The firearms policy may be amended at any time by Resolution of the Winnebago Tribal Council. [TCR 96-74]

8-170 Firearms; record. Receipts for issued firearms shall be maintained in a file established under the control of the Supervisor, Department of Wildlife and Parks, who is responsible for assuring such records are current and accurate. [TCR 96-74]

8-171 Initial qualification requirements. Winnebago Tribal Conservation Officers are required to attend and successfully complete the Bureau of Indian Affairs Basic Police Training course as a requisite for position qualification and employment.

1. Conservation Officers are required to receive four (4) hours of training in the use of weapons, policy and safety and be certified by the Bureau of Indian Affairs law enforcement firearms instructor by achieving a score of 70% or better. Conservation Officers must re-certify with a score of 70% or better every six (6) months to be qualified to carry a sidearm.
2. An Officer who fails to qualify with a score of 70% or better may be re-tested one week later. Any Officer who fails to qualify shall be reassigned to duties that do not require the use of firearms. Any Tribal Conservation Officer who fails to qualify after three attempts within a 30 day period shall be terminated.
3. Tribal Conservation Officers must qualify with a score of 70% accuracy marksmanship for use of a shotgun and rifle as established by the certified firearms instructor. A Conservation Officer who fails to qualify as a marksman may be re-tested one week later. Any Officer who fails to qualify after three attempts within a 30 day period shall be terminated.
4. Lapse of firearms qualification. Whenever a Tribal Conservation Officer's firearms qualification lapses, the Supervisor of the Department of Wildlife and Parks shall request the return of the issued firearm until the Officer re-qualifies as specified.
5 Firearms cleaning. Each Officer shall clean the issued firearms at least once every two weeks or after each use.
6. Wearing of a firearm. Tribal Conservation Officers shall carry sidearms in full view at all times when on duty. Tribal Conservation Officers are strictly prohibited to carry department issued firearms while off duty and are prohibited to carry firearms outside the exterior boundaries of the Winnebago reservation unless en route to other Tribally-owned wildlife areas. Failure to comply will result in disciplinary action.
7. Any part time or temporary Tribal Conservation Officers shall be prohibited to carry or use a firearm unless they have achieved proper training and certification.
8. Firearms inspections. The Senior Conservation Officer shall conduct monthly firearms inspections or as necessary and record the results of the inspection on the Officer's monthly report. Weapons inspection deficiencies require the Senior Conservation Officer to take immediate corrective action to correct the deficiency. Failure to correct the deficiency shall result in the surrender of the firearm.
9. Firearms storage. All department issued firearms and ammunition shall be stored at the Winnebago Police Department. The proper storage of firearms shall include rendering firearms inoperable by installing a safety lock on the firearm and placing the firearm in a gun safe. [TCR 96-74, 05-02, 10-17]

8-172 Procedures when a firearm is used.

1. Conservation Officers shall prepare a written report within 6 hours stating all facts in the drawing or firing of a weapon, except while in marksmanship training or while harvesting an animal species for a special permit. The Conservation Officer shall report the incident of firing his/her weapons to the designated supervisor immediately.
2. While on duty, if a Tribal Conservation Officer has injured or caused death to a human being, the Officer shall immediately notify his/her supervisor. [TCR 96-74]

8-173 Responsibility of the Senior Conservation Officer.

1. Upon receipt of a verbal or written report that a firearm has been discharged without injury to any person or damaging, defacing or destroying private or Tribal properties, the Senior Conservation Officer shall investigate the incident with the proper law enforcement agency and shall submit a verbal and written report of the findings to his/her supervisor.
2. Immediately upon receipt of a verbal or written report that a Conservation Officer has injured or caused death with a firearm, it shall be the responsibility of the Senior Conservation Officer to

immediately notify his/her supervisor and the proper law enforcement agency for investigation. The Senior Conservation Officer shall investigate the incident with the lead law enforcement agency. When the investigation is complete, the Senior Conservation Officer shall submit a verbal and written report of the findings to his/her supervisor.

3. If the Senior Conservation Officer caused the injury or death, the supervisor of the Wildlife and Parks Department shall contact the proper law enforcement agency to conduct a thorough investigation. [TCR 96-74]

8-175 Responsibility of the Chief Administrative Officer. Upon notification that any Tribal Conservation Officer has injured, caused death or has shown inappropriate behavior with a firearm, it shall be the responsibility of the Chief Administrative Officer to provide a copy of the Wildlife and Parks Supervisor's report and recommendations to the Winnebago Tribal Council. Upon receipt of the report, the Winnebago Tribal Council may request a meeting with the parties involved. [TCR 96-74]

8-176 Medical standards.

1. The health of the Conservation Officers and applicants must be such that the individuals have the capacity to meet the demands for performance in the position and for human reliability. Conservation Officers and applicants must undergo a physical examination and be physically and medically capable of performing the essential duties of the position efficiently and without hazard to themselves or others. Failure to meet any of the required physical qualifications shall disqualify the applicant or employee except when medical evidence is presented that the individual can perform the functions of the job efficiently with reasonable accommodation.
2. Each Conservation Officer shall be required to take an annual physical examination performed by a physician designated by the Winnebago Tribe. If a Conservation Officer, after a physician's examination, is not found to be medically fit for duty, the Officer will be placed on medical light duty which will not require the use of a firearm and have three months to receive medical treatment for the condition. If the Officer shows improvement within the three months, he/she may remain on medical light duty for an additional three months if the physician deems necessary. If after the initial three month medical light duty the physician finds the employee is not medically fit for duty nor can reasonably be treated to become medically fit within an additional three months, the employee will be medically discharged.
3. PEB testing shall be given to Conservation Officers every six months. The Department of Wildlife and Parks Supervisor and the Bureau of Indian Affairs Law Enforcement certified PEB Instructor shall both insure that each Tribal Conservation Officer has successfully completed the PEB test. The established PEB procedures outlined in the PEB Manual will be used on a pass/fail system. The testing shall be conducted by a certified PEB Instructor. The Conservation Officers are required to achieve a score of 70% or better. Any Officer who fails to qualify as being physically fit shall re-test no more than three times in a six week period. Failure to achieve the 70% score after three re-tests will result in termination.
4. Applicants and Conservation Officers must be free from any acute or chronic psychiatric, mental or neurological condition which would be a hindrance in the full performance of the scope of work and essential duties of the position. A psychological evaluation shall be performed on all current Conservation Officers and all applicants with satisfactory results prior to weapons certification and on an annual basis thereafter for the term of employment. [TCR 96-74, 10-17]

8-177 Misconduct.

1. The use of firearms for the purpose of intimidation, recreational use or for criminal purposes is prohibited.

2. Winnebago Tribal Conservation Officers shall not be given any special deputy status to enforce laws outside the Wildlife and Parks Code of the Winnebago Tribe of Nebraska unless officially deputized with a specific law enforcement agency.
3. Tribal Conservation Officers shall not impersonate a police officer, impersonate a public servant, use improper influence in official matters, oppress under the color of office and engage in official misconduct as described by Tribal law.
4. Any proven misconduct as defined above will result in termination. [TCR 96-74]

8-178 Special permits. Special permits may be issued at the discretion of the Wildlife and Parks Commission for taking certain species of game for ceremonial or traditional purposes. [TCR 96-74]

8-190 Special permits. Special permits may be issued at the discretion of the Wildlife and Parks Commission for taking certain species of game for ceremonial or traditional purposes. [TCR 96-74]

TITLE 8
ARTICLE 2
WATER MANAGEMENT
(Revised November 6, 2009)

8-201 Purposes.
8-202 Major actions.
8-203 Definitions.
8-204 Severability.
8-205 Composition of the committee.
8-206 Committee chairperson.
8-207 Committee meetings.
8-208 Duties.
8-209 Committee member provisions.
8-210 Listing of current uses.
8-211 Water resource information.
8-212 Public cooperation.
8-213 Declarations of new water use.
8-214 Inventory update.
8-215 Committee and administrator responsibilities.

8-201 Purposes. The purposes of this Article shall be:

1. To promote the protection and use of the waters of the reservation in a manner consistent with Tribal goals and policies;
2. To protect the health, welfare, economic strength, and cultural heritage of the Tribe and its members;
3. To maintain water quality, free-flowing streams, and a healthy environment associated with waters of the reservation;
4. To assert the inherent powers of self-government and sovereign authority of the Winnebago Tribe of Nebraska over all actions taken within the reservation that may affect the use or quality of reservation waters;
5. To provide for effective and coordinated management of regional water supplies with Tribal, state, federal and local governments; and
6. To initiate an integrated approach by the Tribe to managing the waters, forests, wildlife, land, and other natural resources of the reservation. [TCR 87-82]

8-202 Major actions. In order to effectuate the policies in section 8-201, this Article shall:

1. Establish a water resource committee;
2. Initiate a water use inventory;
3. Require that all future water uses be registered with the Tribe; and
4. Lay the groundwork for developing water quality control programs, water regulatory Codes, and integrated resource management strategies. [TCR 87-82]

8-203 Definitions. The following words and terms shall be defined as follows when used in this Article:

1. "Administrator" means the water administrator of the Tribe appointed and supervised by the water resource committee.
2. "Committee" means the water resource committee established under Sections 8-205, 8-206 and 8-207 of this Article.
3. "Person" includes any individual corporation, association, unit of government, organization, or other legal entity.

4. "Reservation" means all territory within the boundaries of the Winnebago reservation regardless of ownership.
5. "Tribe" means the Winnebago Tribe of Nebraska.
6. "Waters of the reservation" and "reservation waters" means all water that lies, flows, arises, or otherwise occurs on or under the reservation.
7. "Water use" means any withdrawal diversion, pumping, or impoundment of water for any purpose by means of well, ditch, hose, pipe, dam, or other structural device. [TCR 87-82]

8-204 Severability. If any provision of this Article is held to be legally invalid, the remainder of this Article shall retain full force and effect under law. [TCR 87-82]

8-205 Composition of the committee. The committee, as appointed by the Tribal Council, shall consist of three members normally serving terms of three years. The initial members of the committee, however, will serve the following terms: one member shall serve one year; one member shall serve two years; and one member shall serve three years. [TCR 87-82]

8-206 Committee chairperson. The member designated as initially serving three years on the committee shall be the first committee chairperson. Thereafter, the member having served the longest period of consecutive time on the committee shall be chairperson. Such chairperson shall be in charge of running the meetings of the committee and reporting to the Tribal Council regarding committee actions. [TCR 87-82]

8-207 Committee meetings. The committee shall meet once every two months, or with such greater frequency as determined by the committee members. Decisions of the committee must be made by a minimum two-thirds vote of the members. A written summary of each meeting shall be compiled by the chairperson, reviewed by the other committee members, and submitted to the Tribal Council. At least two members, including the chairperson, must be in attendance at all times for the conduct of business at committee meetings. [TCR 87-82, 10-17]

8-208 Duties. The committee shall:

1. Implement the provisions and policies of this Article;
2. Appoint and supervise the water administrator;
3. Make recommendations to the Tribal Council regarding future water policies and regulations; and
4. Submit a budget request in November 1987 if funds are needed for implementing future water programs. [TCR 87-82]

8-209 Committee member provisions.

1. Removal of member: Committee members shall serve their full term unless they submit a written resignation to the Tribal Council or are removed by the affirmative vote of two-thirds of the Tribal Council membership because of incompetency, neglect of duty, or misconduct.
2. Vacancies: Vacancies on the committee shall be filled for the remainder of the unexpired term through interim appointment of a new member the Tribal Council.
3. Compensation: Compensation of committee members, if any, shall be fixed by the Tribal Council.
4. Qualifications: Members of the committee must be over twenty years of age and enrolled in the Tribe. The committee shall recommend to the Tribal Council persons to fill committee vacancies. [TCR 87-82]

8-210 Listing of current uses. The administrator shall by December 31, 1987 compile a comprehensive listing of all current uses of reservation waters. [TCR 87-82]

8-211 Water resource information. The administrator shall by December 31, 1987 compile all available information, reports, data, and other documentation regarding the amount, quality, and use of reservation waters. [TCR 87-82, 10-17]

8-212 Public cooperation. All persons who use reservation waters shall cooperate with and respond to reasonable requests by the administrator in the compilation of the water use inventory and documentation described in Sections 8-201 and 8-202. [TCR 87-82]

8-213 Declarations of new water use. Prior to initiating new water uses, persons shall report their proposed use of reservation water by filing a "Declaration of New Water Use" with the administrator on a form provided by the administrator. The Administrator shall undertake timely measures to ensure that adequate notice of this requirement is provided to persons who use waters of the reservation. [TCR 87-82]

8-214 Inventory update. The administrator shall utilize the "Declaration of New Water Use" to prioritize future water uses on the reservation and to maintain a current listing of the water use inventory. [TCR 87-82]

8-215 Committee and administrator responsibilities. The committee and administrator shall:

1. Coordinate with other governmental entities to protect regional water quality;
2. Assess and recommend to the Tribal Council the extent to which the Tribe should participate in programs under the federal Safe Drinking Water Act; and
3. Assess and recommend to the Tribal Council the extent to which the Tribe should participate in programs under the federal Clean Water Act; and
4. Implement the provisions of Resolution 87-79 to oppose any dump sites on or near the reservation based on potential contamination of Indian Tribal drinking water sources and all reservation waters. [TCR 87-82]

TITLE 9
GAMING
(Amended and Restated as of August 14, 2008)

SUMMARY OF CONTENTS

SECTION	ARTICLE-PAGE
1. TABLE OF REVISIONS	ii
2. TABLE OF CONTENTS	iii
3. ARTICLE 1: DEFINITIONS AND GENERAL PROVISIONS	1-1
4. ARTICLE 2: TRIBAL GAMING COMMISSION	2-1
5. ARTICLE 3: LICENSING PROVISIONS	3-1
6. ARTICLE 4: CLASS II GAMING	4-1
7. ARTICLE 5: CLASS III GAMING	5-1
8. ARTICLE 6: VIOLATIONS; PENALTIES	6-1
9. ARTICLE 7: MISCELLANEOUS PROVISIONS	7-1

TITLE 9
TABLE OF REVISIONS

The following table is included in this title as a guide for determining whether each article properly reflects the current version. This table will be updated with the revision of each article.

Through usage and supplementation, pages in bound titles can be inserted and removed when sections are revised on an article-by-article basis. This table should be placed before the Table of Contents in the title.

The "Article" column lists each article, and the "Section" column lists any corresponding sections that have been revised, in sequence. The "Revised Date" column reflects the effective date of the revision (e.g., "6/20/15"). If an article is not listed in the table, it has not been revised since the December 2015 Winnebago Tribal Code update and distribution.

Article	**Section**	**Revised Date**

TITLE 9
GAMING
(Amended and Restated as of February 22, 2013)

ARTICLE 1
DEFINITIONS AND GENERAL PROVISIONS

9-101 Definitions.
9-102 Gaming permitted.
9-103 Tribe as sole owner.
9-104 Application of gaming revenues.
9-105 Distribution limitation.
9-106 Management authorized.
9-107 Governing laws.
9-108 Purpose.

TITLE 9
ARTICLE 2
TRIBAL GAMING COMMISSION

9-201 Establishment and composition of commission.
9-202 Qualifications of commissioners.
9-203 Meetings.
9-204 Resignation.
9-205 Removal.
9-206 Commission office.
9-207 Monthly reports.
9-208 Powers and duties of the gaming commission.
9-209 Compensation and expenses.
9-210 Commission budget.
9-211 Commission records.
9-212 Financial interest prohibited.
9-213 Rules.

TITLE 9
ARTICLE 3
LICENSING PROVISIONS

9-301 Required licenses.
9-302 Facility license.
9-303 Operator's license.
9-304 Licensing of employees and key employees.
9-305a License for distributor and suppliers.
9-305b Machine licenses.
9-305c Vendor license.
9-306 Provisional license.
9-307 Notification to national commission.
9-308 Certification of gaming devices; seizure of contraband authorized.
9-309 Access to premises and records.
9-310 All information confidential.
9-311 Duration of licenses.
9-312 License suspension; revocation.
9-313 Forms of licenses.
9-314 License application fee.
9-315 Background investigations.
9-316 Eligibility determination.
9-317 Forwarding applications and reports to the national commission.
9-318 Report to the national commission.
9-319 Granting a gaming license.
9-320 Application forms.
9-321 Burden of proof.

TITLE 9
ARTICLE 4
CLASS II GAMING

9-401 Gaming regulated.
9-402 Games authorized.

TITLE 9
ARTICLE 5
CLASS III GAMING

9-501 Gaming regulated.
9-502 Games authorized.
9-503 Gaming rules.
9-504 Rules displayed.
9-505 Gaming devices.
9-506 Security.
9-507 Commission rules.
9-508 Right of entry and inspection.
9-509 No credit.
9-510 Notification of violations.
9-511 Surveillance.

TITLE 9
ARTICLE 6
VIOLATIONS; PENALTIES

9-601 Role of Tribal prosecutor.
9-602 Tribal Court jurisdiction.
9-603 Prohibited acts.
9-604 Criminal violations penalties.
9-605 Civil violations.
9-606 Civil penalties.
9-607 Consent to jurisdiction.
9-608 Civil actions.
9-609 Administrative hearings.
9-610 Agent for service.

TITLE 9
ARTICLE 7
MISCELLANEOUS PROVISIONS

9-701 Sovereignty not waived.
9-702 Audits.
9-703 Contracts subject to audit.
9-704 Public safety.
9-705 Unclaimed winnings.
9-706 Saving clause.
9-707 Short title.
9-708 Repeal of prior law.
9-709 Customer disputes.
9-710 Customer rights regarding disputes.
9-711 Gaming commission action on customer disputes.
9-712 Right to exclude or remove.
9-713 Review and approval of gaming contracts.

TITLE 9
ARTICLE 1
DEFINITIONS AND GENERAL PROVISIONS

9-101 Definitions.
9-102 Gaming permitted.
9-103 Tribe as sole owner.
9-104 Application of gaming revenues.
9-105 Distribution limitation.
9-106 Management authorized.
9-107 Governing laws.
9-108 Purpose.

9-101 Definitions.

1. "Applicant" means any individual, partnership, corporation, joint venture or other business enterprise seeking a license or renewal of a license described in this Title Nine.
2. "Chairman" means the chairman of the gaming commission of the Winnebago Tribe of Nebraska.
3. "Chairman of the National Commission" means the chairman of the National Indian Gaming Commission.
4. "Class II gaming" means Class II gaming as defined in IGRA and 25 CFR Section 502.3.
5. "Class III gaming" means the games that are defined in IGRA 25 CFR Section 502.4 or Section 9-502 of this Title Nine.
6. "Code" means this Title Nine as amended, unless the context clearly indicates that this reference is to the Code of the Winnebago Tribe of Nebraska.
7. "Collateral agreement" means any contract, whether or not in writing, that is related, either directly or indirectly, to a management contract, or to any rights, duties or obligation created between the Tribe, any of its members, entities or organizations and a management contractor or any person or entity related to a management contractor or subcontractor.
8. "Commission" means the gaming commission of the Winnebago Tribe of Nebraska.
9. "Commissioner" means an individual member of the commission.
10. "Compact" means the gaming compact entered into between the Tribe and the state of Iowa pursuant to provisions of IGRA, including any renewal, extension and amendment thereof, and or such future compact as may be entered into between the Tribe and the state of Nebraska.
11. "Contraband" means any unlicensed gaming device or equipment.
12. "Council" or "Tribal Council" means the duly elected Tribal Council of the Winnebago Tribe of Nebraska.
13. "Facility license" means a license issued by the commission pursuant to Section 9-302 of this Title Nine.
14. "Gaming" means any Class II or Class III gaming activity.
15. "Gaming device" means any slot machine, mechanical, electronic, computer, video, or other device that is activated by inserting comes, currency, or tokens, and which upon activation displays randomly generated symbols to indicate winning combinations, dispenses prizes and collects gaming revenues, and any other game of chance, including any equipment whose primary purpose is a component of a Class II or Class III game of chance.
16. "Gaming operation" means any Tribally owned business enterprise whose revenues are primarily derived from gaming licensed under this Title Nine.
17. "IGRA" means the Indian Gaming Regulatory Act, P.L. 100-497. 25 U.S.C. Section 2701, et seq., as amended from time to time.
18. "Key employee" means any primary management official (who is not considered an operator), subcontractor, manager or employee of a gaming operation who (i) is a department manager, (ii) is accountable for gaming revenues or payouts, (iii) is a caller, dealer or operator of a game, (iv) has access to the internal space of any gaming device, or (v) is responsible for auditing, surveillance, security, hiring and terminating employees, or develops work policies in a gaming

operation, (vi) receives annual compensation in an amount over Twenty five thousand dollars ($25,000), or (vii) is defined as a key employee by IGRA, and 25 CFR Section 502.14. Key Employee does not include members of the Tribal Council, or the Chief Financial Officer, General Counsel or Benefits Manager of the Tribe.

19. "License" means a revocable privilege granted for a limited period of time by the commission, pursuant to this Title Nine, to a person or entity to perform certain acts. The issuance of a license shall not create for the benefit of a licensee a property or liberty interest in the license.
20. "Licensee" means any person who holds a current license issued by the commission.
21. "National commission" or "NIGC" means the National Indian Gaming Commission created pursuant to IGRA.
22. "Net revenues" means the gross revenues of a gaming operation less amounts paid out as, or paid for, prizes and total operating expenses; excluding management fees.
23. "Operator" means any person having a direct or indirect financial interest in a management contract with the Tribe as defined by 25 CFR Section 502.17.
24. "Participant" means any individual who places a bet or wager or who otherwise participates in any gaming activity.
25. "Person" means any individual partnership, corporation, joint venture or other business entity.
26. "Player" means a participant.
27. "Rules" means the gaming rules promulgated by the Winnebago Gaming Commission and approved by the Council in accordance with this Title Nine.
28. "Reservation" means all land within the exterior boundaries of the reservation of the Winnebago Tribe and all lands held in trust by the United States for the benefit of the Tribe or held by the Tribe or any individual subject to restriction by the United States for the benefit of the Tribe or held by the Tribe or any individual subject to restriction by the United States against alienation and over which the Tribe exercises governmental authority, including lands meeting the foregoing description which may be acquired by Tribe after the enactment of this Title Nine and which meet the requirements of 25 U.S.C. Section 2719.
29. "Tribal" means of or belonging to the Winnebago Tribe.
30. "Tribal Court" means the trial court of the Winnebago Tribe known as the Winnebago Tribal Court.
31. "Tribe" or "Winnebago Tribe" means the Winnebago Tribe of Nebraska, its authorized agents, officials, and representatives. [TCR 94-37, 94-46, 06-24]

9-102 Gaming permitted. Only those games described in Article Five of this Title Nine are authorized to be conducted on the reservation, provided such games are conducted in accordance with and only by persons duly licensed under this Title Nine. All other forms of gaming on the reservation are prohibited. Participants and other persons promoting or in any way participating in any form of unauthorized gaming are subject to the penalties set forth in Article Six of this Title Nine. [TCR 94-37]

9-103 Tribe as sole owner. The Tribe shall have the sole proprietary interest in and responsibility for the conduct of all gaming occurring on the reservation. [TCR 94-37]

9-104 Application of gaming revenues. The net revenues of the Tribe derived from any authorized gaming operation may be used for the following purposes only:

1. to fund Tribal government operations or programs;
2. to provide for the general welfare of the Winnebago Tribe and its members;
3. to promote the economic development of the Winnebago Tribe;
4. to donate to charitable organizations designated by the Tribal Council pursuant to a resolution;
5. to help fund operations of local government agencies; and

6. to make per capita payments to members of the Winnebago Tribe, provided such payments are made pursuant to a plan (i) adopted by resolution of the Council (ii) meeting the requirements of IGRA and (iii) approved in writing by the Secretary of the Interior. [TCR 94-37, 94-46]

9-105 Distribution limitation. In the event the Council adopts a plan meeting the requirements of Section 9-104 (6), above, no more than sixty percent of the monthly net revenue derived from gaming on the reservation may be distributed pursuant to such plan. [TCR 94-37]

9-106 Management authorized. The Council may select managers and/or operators to conduct the gaming authorized by this Title Nine and may delegate to such individuals by contract such management and operating responsibilities as the Council deems prudent from a business perspective; provided, however, if any management or operator's contract is inconsistent with applicable provisions of IGRA, the compact, or this Code then the respective provisions of IGRA, the compact, or this Code shall govern. [TCR 94-37, 94-46]

9-107 Governing laws. All gaming conducted on the reservation shall be conducted in conformance with the a compact, the laws of the Winnebago Tribe and other applicable laws. [TCR 94-37, 94-46]

9-108 Purpose. It is the purpose of this Title Nine to (i) authorize and regulate gaming on the reservation as a means of promoting Tribal economic development, self sufficiency, and strong Tribal government; (ii) provide a regulatory structure for authorized gaming that will assure its fair, safe and honest operation; and (iii) ensure that the Tribe is the primary beneficiary of any gaming activity conducted on the reservation. [TCR 94-37]

TITLE 9
ARTICLE 2
TRIBAL GAMING COMMISSION

9-201 Establishment and composition of commission.
9-202 Qualifications of commissioners.
9-203 Meetings.
9-204 Resignation.
9-205 Removal.
9-206 Commission office.
9-207 Monthly reports.
9-208 Powers and duties of the gaming commission.
9-209 Compensation and expenses.
9-210 Commission budget.
9-211 Commission records.
9-212 Financial interest prohibited.
9-213 Rules.

9-201 Establishment and composition of commission.

1. There is hereby established a Tribal gaming commission of the Winnebago Tribe of Nebraska.
2. The commission shall be an agency of the Winnebago Tribe, subordinate to the Council, possessing all powers set forth in this Title Nine, and such other powers as are now or hereafter determined by law.
3. The gaming commission shall consist of five members, the Council shall appoint a chairman and a vice-chairman. A minimum of three members of the gaming commission must be enrolled members of the Winnebago Tribe.
4. Of the initial members of the commission, the chairman shall serve for two years and the vice-chairman shall serve for one year. Each of the three remaining members shall be appointed to serve, respectively, one, two, and three year terms. All subsequent terms shall be three years.
5. If any commissioner is removed by the Council, resigns, dies, or for any reason becomes unable to continue serving on the commission, the Council shall appoint a person to fill such vacancy. Such appointment shall be for the balance of the unexpired term of the commissioner being replaced.
6. The Chairman of the Commission shall have supervisory authority over the Commission personnel. This authority shall include the authority to discipline any Commission personnel, said authority to include, if necessary, the termination or suspension of employment of a Commissioner of the Tribal Council. The decision of whether to retain or terminate a commissioner shall rest solely with the Tribal Council.

9-202 Qualifications of commissioners.

1. No individual shall be appointed to serve on the gaming commission who:
   a. has been convicted of a felony or gaming offense; or
   b. has any financial interest in**,** or management responsibility for, any gaming activity on or off the reservation.
2. An individual may not serve on the gaming commission unless s/he meets the following qualifications:
   a. is over twenty-one years of age; and
   b. meets the licensing requirements of Section 9-303 of this Title Nine. [TCR 94-37]

9-203 Meetings. The commission shall meet as often as is necessary to carry out the responsibilities set forth in this Title Nine. The chairman shall preside over all meetings; provided, however, that the vice-chairman shall preside in the chairman's absence. The commissioners shall annually select a secretary and a treasurer from among their membership. Three members of the gaming commission shall constitute a quorum for the purpose of conducting the business of the commission. All official decisions of the commission shall be by majority vote. [TCR 94-37]

9-204 Resignation. Any commissioner may resign his/her position by submitting a written resignation to the Council. Such resignation shall be effective upon receipt. [TCR 94-37]

9-205 Removal. By Council resolution, the Council may remove any commissioner for any of the following reasons:

1. failure to perform any Council directive or task;
2. failure to carry out duty or responsibility set forth in this Title Nine or the rules;
3. failure to comply with any provision of this Title Nine or the rules;
4. misconduct in office; or
5. serious inefficiency or neglect of duty. [TCR 94-37]

9-206 Commission office. The Council shall provide the commission with office space on the reservation and shall also make available to the commission such support staff, office supplies, and equipment as is necessary for the commission to fulfill its purpose. [TCR 94-37]

9-207 Monthly reports. On or about the fifteenth day of each calendar month, the chairman of the commission shall present a written report to the Council which report shall summarize the activities of the commission during the previous thirty-day period, including but not limited to: (i) the number and types of licenses issued and to whom: (ii) a summary of any completed background investigations; (iii) an accounting of the commission's expenditures, and (iv) a summary of all official actions taken by the commission. [TCR 94-37, 94-46]

9-208 Powers and duties of the gaming commission. The Council delegates to the gaming commission the following powers:

1. to monitor all gaming activities on the reservation on a continuing basis;
2. to enforce or cause to be enforced all Tribal laws, directives, rules and resolutions pertaining to gaming;
3. to enforce or cause to be enforced all federal and state laws specifically applicable to gaming on the reservation;
4. to monitor compliance with any compact;
5. to monitor compliance by a manager or operator with the terms of an applicable management agreement and any collateral documents;
6. to notify the Council of any act of noncompliance or illegality under (2), (3), (4), or (5) above;
7. to conduct background investigations or to cause such investigations to be conducted in order to issue Tribal gaming licenses in accordance with Article Three of this Title Nine and to impose, rescind or reduce civil penalties for breach of this Code or rules of the commission;
8. to grant, suspend and revoke licenses pursuant to Section 9-312;
9. to investigate the background, activities and conduct of all licensees;
10. to certify gaming devices in accordance with Section 9-305 b and 9-308; to draft rules as it deems appropriate and necessary to implement the provisions of this Title Nine, and to present such rules to the Council for approval and adoption by Tribal resolution;
11. to seize as contraband any gaming device that is not certified pursuant to Section 9-308;

12. to specify the payout from all authorized gaming and the payout rate for all gaming devices;
13. to control all surveillance activities;
14. to hold administrative hearings, and to promulgate rules under which such hearing may be conducted;
15. to issue subpoenas;
16. to demand and obtain complete access to all buildings, offices, records, personnel and equipment relating to the gaming operation;
17. to take all other action necessary or appropriate in order to carry out the duties set forth in this Title Nine. [TCR 94-37, 94-46]

9-209 Compensation and expenses.

1. No member of the gaming commission shall receive a salary or any other compensation for his/her time except as specifically provided by resolution of the Council.
2. All members of the gaming commission shall be reimbursed by the Tribe in accordance with current Tribal policy for all travel, subsistence, and other necessary expenses incurred by them in performance of their duties. [TCR 94-37]

9-210 Commission budget. The Council shall, to the extent feasible, make available to the commission such funds as are reasonably necessary in order for the commission to fulfill its purposes. On or before July 1 of each year, the commission shall prepare an annual operating budget and submit such budget to the Council for approval. [TCR 94-37]

9-211 Commission records. The commission shall keep and maintain accurate, complete and detailed records of its activities, which records shall be made available to the Council on demand. Apart from access by the Council, all commission records, with the exception of public reports, and transcripts of public proceedings, shall be confidential. [TCR 94-37]

9-212 Financial interest prohibited. No commissioner nor member of his/her immediate family shall have any financial interest in the gaming regulated by the commission other than the financial interest enjoyed equally by all Tribal members and shall not have any financial interest in any business supplying equipment or services for authorized gaming. For purposes of this Section, “immediate family” means a commissioner’s spouse and the father, mother, brother, sister, child or stepchild of the commissioner or the commissioner’s spouse. For purposes of this Section 9-212, “financial interest” does not include any interest held by an employee of the gaming operation by virtue of their employment. [TCR 94-37, 94-46]

9-213 Rules. All rules provided for under this Title Nine shall be drafted by the office of the Tribal Treasurer with the assistance and advice of legal counsel, and presented to the Council for discussion, possible revision, and approval. All rules shall be adopted by the Council by resolution and shall, in conjunction with the provisions of this Title Nine, constitute the body of the gaming laws of the Tribe and shall be made available to the Tribal membership and such other persons as the commission deems entitled thereto. [TCR 94-37, 06-24]

TITLE 9
ARTICLE 3
LICENSING PROVISIONS

9-301	Required licenses.
9-302	Facility license.
9-303	Operator's license.
9-304	Licensing of employees and key employees.
9-305a	License for distributor and suppliers.
9-305b	Machine licenses.
9-305c	Vendor license.
9-306	Provisional license.
9-307	Notification to national commission.
9-308	Certification of gaming devices; seizure of contraband authorized.
9-309	Access to premises and records.
9-310	All information confidential.
9-311	Duration of licenses.
9-312	License suspension; revocation.
9-313	Forms of licenses.
9-314	License application fee.
9-315	Background investigations.
9-316	Eligibility determination.
9-317	Forwarding applications and reports to the national commission.
9-318	Report to the national commission.
9-319	Granting a gaming license.
9-320	Application forms.
9-321	Burden of proof.

9-301 Required licenses.

1. No gaming facility operator, key employee or any employee the commission deems subject to employee licensing procedures, may operate, conduct or be employed as an employee in a gaming operation on the reservation without first obtaining a license in accordance with this Article Three. The following types of licenses are authorized and may be issued by the commission upon satisfaction of the respective conditions set forth herein:
   a. Facility License;
   b. Operator's License;
   c. Employee License.
   d. Distributor License;
   e. Machine License;
   f. Vendor License.
2. The licensing requirement contained in subsection (1) shall not apply to members of the Winnebago Tribal Council, the Chief Financial Officer of the Tribe, the General Counsel of the Tribe or the Benefits Manager of the Tribe. [TCR 94-37, 94-126, 06-24]

9-302 Facility license. The commission may issue a facility license for each facility where gaming is conducted to an applicant who has completed an application and has, with respect to the physical structure in question, fulfilled the following conditions:

1. The structure is a sound physical structure with adequate and safe plumbing, electrical heating, cooling and ventilation systems in place and operational;
2. The structure has been inspected and approved for safety by a building and fire inspector designated by the Council;
3. The structure is adequate in all respects to accommodate the gaming intended to be carried out within the structure;
4. The structure is equipped with security and surveillance equipment meeting or exceeding provisions set forth in the compact and in this Title Nine;
5. In the judgment of the commission the structure meets all requirements of applicable federal Tribal and state laws;

6. In the judgment of the commission, the structure, from an aesthetic and functional perspective, would be an attribute to the reservation; and
7. All applicable commission fees have been paid. [TCR 94-37, 94-46]

9-303 Operator's license. The commission may issue an operator's license to an applicant intending to manage (including an applicant for the position of the general manager of the gaming operation), operate or invest in a gaming facility on the reservation provided that all of the criteria under this Section have been met. Under this Section, each individual with a direct or indirect financial interest in an applicant entity seeking to qualify as an operator, and each person with a management interest in such an applicant entity, must also apply for and obtain an operator's license, in order for the applicant entity to qualify for such a license. If the applicant is an entity, such applicant may be required to submit a separate application.

1. The applicant has submitted to the commission a completed application containing the following information:
   a. name;
   b. date of birth;
   c. social security number;
   d. physical description;
   e. the applicant's residence since age eighteen;
   f. the applicant's employment history since age eighteen;
   g. the applicant's criminal history, including major traffic offenses, including the date, place, details surrounding any arrest or charges, and the disposition of any charges filed;
   h. whether the applicant has ever held a professional or occupational license issued by any state, the type of license, the license number, and the details surrounding any suspension, revocation, or other disciplinary action based on the license, and if the license is not current, the reason it is not current;
   i. whether the applicant has ever held a gaming-related license issued by any jurisdiction, the jurisdiction in which the license was issued, the type of license, the license number, the details surrounding any suspension, revocation or other disciplinary action taken based on the license, and if not current, the reason it is not current;
   j. whether the applicant has ever had any experience related to any agreement with any gambling operation, the exact nature of the applicant's role in the operation, the name and address of all parties to the agreement, the place the agreement was performed, and the dates covered by the agreement;
   k. a complete financial statement of the applicant;
   l. the applicant's commitment to provide any additional information as may be required by the commission;
   m. the applicant's sworn statement that all information submitted to the commission is true and accurate; and
   n. any other information which the commission may require.
2. The commission has obtained a set of fingerprints.
3. The applicant has submitted a current photograph along with the completed application.
4. The applicant is at least eighteen years of age.
5. The applicant is not employed in any part or full-time employment with a government or private employer in any capacity which would create a conflict of interest between his/her employment and the interests and objectives of the licensed employment.
6. The applicant has not been convicted within the last five (5) years of any felony or drug related offense. If a conviction occurred within the last (5) years, the license shall be denied unless the licensed employment is exempted by regulation for non-gaming positions or services. If

conviction occurred more than five (5) years prior to the application date, a license may be issued if the Commission determines that sufficient evidence of rehabilitation exists.

7. The applicant is qualified, by experience or otherwise, to perform the duties required.
8. The applicant has agreed to comply with the terms of the compact and all Tribal, state and federal laws applicable to gaming on the reservation.
9. A background investigation requested by the commission verifying the truthfulness of the information provided by the applicant to the commission has been completed, and such investigation indicates that the applicant is eligible for licensure so that a determination can made under Section 9-316.
10. The Council has, by resolution, approved the issuance of such license to the applicant.
11. The applicant has paid all applicable commission fees.
12. The applicant has submitted a written report detailing all compensation received pursuant to a management agreement with the Tribe.
13. The applicant has submitted a written report detailing the amount invested to develop any project contemplated under a management agreement or any collateral agreement with the Tribe.
14. The applicant has submitted a written report disclosing all collateral agreements and providing copies thereof. [TCR 94-37, 94-46, 13-53]

9-304 Licensing of employees and key employees. The commission may issue an employee license to any employee or key employee meeting the requirements set forth in Section 9-303(l) through (9) and (11) above. [TCR 94-37]

9-305a License for distributor and suppliers. Any person, organization, or entity (including those who hold valid operator licenses) selling, leasing, or otherwise distributing or supplying gambling equipment or video games of chance to the Tribe, shall be required to obtain a distributor license by meeting the requirements set forth in 9-303(l) through (9) and (11) above. [TCR 94-37, 94-46]

9-305b Machine licenses. Any person, organization, or entity applying for a facility license, or an operator's license where applicable, must obtain from the gaming commission an annual nontransferable license for each video game of chance or slot machine to be placed in a gaming facility operating under the provisions of this Code. An application for a video game of chance or slot machine shall contain the following information:

l. The name and address of the applicant with proof of a current and valid distributor, operator, or manufacturer license issued by a state or the Winnebago Tribe of Nebraska;
2. Identification numbers or Codes for each video game of chance or slot machine placed in a Tribal gaming enterprise, including the manufacturer, the serial number and the model number;
3. Proof of approval and certification of the machine by an approved gaming test laboratory or proof that the video game of chance or slot machine conforms precisely to the exact specification of the video game of chance or slot machine prototype tested and approved by a gaming test laboratory;
4. Any other information required by the Tribal-state compact on video games of chance or slot machines or the rules of the commission;
5. Upon issuance, the gaming commission shall have attached to each video game of chance or slot machine licensed under the provisions of this Code an unremovable identification plate/sticker on the exterior cabinet which shall contain a commission identification number. [TCR 94-37, 94-46]

9-305c Vendor license. Any person, organization, or entity other than those which hold a valid distributor license which sells, leases, or otherwise provides to a Tribal gaming facility any item used by the gaming facility to conduct its operation shall be required to hold a valid vendor license. The commission shall promulgate a vendor license application and, within its sole discretion, assess an application fee of twenty-five dollars ($25.00) to two thousand five hundred dollars ($2,500.00)

dependent upon the relationship between the vendor and the gaming facility. The commission may waive the requirement that a vendor license applicant complete a full-scale background investigation under this Article Three. [TCR 94-126, 95-21]

9-306 Provisional license. Upon submission of a complete license application and pending the completion of background investigation, the commission may issue a provisional employment license to an employee or key employee. A provisional employee license may be valid for up to six months. A management contractor may receive a provisional operator's license for a period of up to six months provided that the management contractor is licensed in a capacity substantially similar to the position of a management contractor by the state of Nevada, New Jersey or South Dakota. A provisional license shall expire unless a mutual license is issued by the commission on or before a date not more than one hundred and eighty days from the date of issue of the provisional license. [TCR 94-37]

9-307 Notification to national commission.

1. The results of all background investigations performed by or on behalf of the commission relating to the issuance of the licenses described in Sections 9-303 and 9-304 of this Title Nine shall be submitted to the national commission prior to the issuance of the applicable license and in accordance with Section 9-317.
2. The national commission shall be promptly notified by the Tribe of the issuance of any license described in Section 9-303 or 9-304 of this Title Nine, and of any action taken to suspend or revoke any such license or to impose civil penalties upon any licensee. [TCR 94-37]

9-308 Certification of gaming devices; seizure of contraband authorized. No gaming device shall be operated on the reservation until it has been certified by the commission as meeting the requirements of the compact, this Title Nine, and the rules. The commission shall maintain a complete listing of all certified gaming devices, including an accurate description of each such device. Any device operated without such certification shall be deemed to be contraband and shall be subject to seizure by the commission pending a hearing pursuant to the rules. Any gaming device found to be contraband after a hearing shall be forfeited and may be disposed of or destroyed by the commission as it sees fit; the owner of any such device shall not be entitled to any compensation for the seizure, and may be subject to civil penalties as provided by this Title Nine and the rules. [TCR 94- 37]

9-309 Access to premises and records. No applicant or licensee or his/her employee or agent may refuse the commission, in the course of official business, access to any gaming operation or may neglect or refuse to produce records or evidence or to give information on lawful demand by a commissioner or may otherwise interfere with lawful efforts by the commission to produce such information. [TCR 94-37]

9-310 All information confidential. The commission shall maintain as confidential information all information provided by an applicant during the licensing procedure; provided, however, that the commission may disclose any information as is necessary to make appropriate reports to the Tribe, the national commission, other gaming regulatory bodies and to otherwise carry out the provisions of this Title Nine and the rules. [TCR 94-37]

9-311 Duration of licenses. Any license issued three hundred and sixty five days or more prior to the effective date of this Code is renewable immediately, and shall expire, as provided in this Section 9-311, absent timely delivery to the commission of a complete application for renewal. Any license which expires or becomes renewable pursuant to this Code shall, upon timely submission of a complete application, be deemed to be a provisional license, and shall be effective for one hundred and eighty days as of date of enactment of this Code or issuance of an annual license. Any license issued less than three hundred and sixty four days before the effective date of this Code shall expire three hundred sixty five

days from the date of issuance, absent approval of a renewal application, or the issuance of a provisional license, on or before the expiration date. The commission may receive renewal applications, conduct investigations, and make a final determination regarding each category of license or individual in the order the commission deems appropriate. All licenses issued pursuant to this Code, and each renewal thereof, shall be valid for a period no longer than one year and must be renewed on or before the anniversary of the date of the license's issuance.

1. A facility license issued more than three hundred and sixty four days prior to the effective date of this Code is renewable immediately, and shall expire, absent delivery to the commission of a completed application for renewal within one hundred and twenty days of the effective date of this Code; provided, however a facility license may be immediately suspended or revoked by the commission upon determination, following inspection, that the facility no longer meets the requirements set forth in Section 9-302.
2. An operator's license issued more than three hundred and sixty four days prior to the effective date of this Code is renewable immediately, and shall expire, absent delivery to the commission of a completed application for renewal with in thirty days of the effective date of this Code.
3. An employee license issued more than three hundred and sixty four days prior to the effective date of this Code is renewable immediately, and shall expire, absent delivery to the commission of a completed application for renewal within ninety days of the effective date of this Code.
4. A distributor's license issued more than three hundred and sixty four days prior to the effective date of this Code is renewable immediately, and shall expire, absent delivery to the commission of a completed application for renewal within ninety days of the effective date of this Code.
5. A machine license issued more than three hundred and sixty four days prior to the effective date of this Code is renewable immediately, and shall expire, absent delivery to the commission of a completed application for renewal within thirty days of the effective date of this Code. [TCR 94-37, 94-46]

9-312 License suspension: revocation.

1. The commission may revoke or suspend the license of any licensee who is charged with a Class II or a Class III offense under the Tribal Code.
2. The commission shall immediately suspend the license of any licensee who is charged with a Class I offense under the Tribal Code. If convicted of such charge, such license shall be revoked with no opportunity for reinstatement. The commission shall draft rules implementing this Section which assure the due process and equal protection rights of licensees.
3. The commission shall honor the suspension of any occupational license of any person currently under suspension or in bad standing in any other gambling jurisdiction in the United States.
4. The commission may revoke or suspend the license of any licensee who fails to follow a commission directive or becomes subject to any civil penalty under this Title Nine.
5. The commission may revoke or suspend the license of any licensee who fails to comply with any aspect of this Title or the rules, and may impose civil penalties as provided by this Title and the rules.
6. The commission may revoke or suspend the license of any licensee who fails to comply with any Winnebago Tribe of Nebraska Tribal Court order.
7. The commission may rescind or reduce penalties, including the reinstatement of suspended or revoked licenses, but only after the reason for such suspension, revocation, or penalties has been cured. [TCR 94-37, 94-46]

9-313 Forms of licenses. The commission shall establish the standard form and content of all applications, licenses and certificates authorized under this Article Three. [TCR 94-37]

9-314 License application fee. Each application for an initial or renewal license shall be accompanied by payment of a nonrefundable license fee. The Gaming Commission's imposition of the license fee properly owed under the Code shall be final. No license fee may be considered an operating expense of the gaming operation. This fee is imposed for the revocable privilege of being licensed to engage in public gaming activities within the jurisdiction of the Tribe. All license fees collected under authority of the Gaming Code shall be paid to the Treasurer of the Tribe, and the Treasurer shall deposit them in a separate account to be applied to expenses incurred by the Gaming Commission from the enforcement of this Code. The Gaming Commission, in its sole discretion, may waive or reduce any license application fee. The license application fees are as follows:

1.	Facility License	
	Class II Facilities	$ 6,000.00
	Class II Gaming (High Stakes Bingo)	30,000.00
	Class III Gaming	30,000.00
2.	Management Company	10,000.00
3.	Key Employee License	
	-0- to 24,999.99	125.00
	25,000.00 to 49,999.99	200.00
	50,000.00 and over	350.00
4.	Non-Key Employee License	75.00
5.	Distributor/Manufacturer License	4,000.00
	Class III Facilities	
6.	Gaming Device License (per Unit).	450.00
	Class II Facilities	
	Gaming Device License (per Unit)	225.00
7.	Vendor License.	50.00-4,000.00

[TCR 94-37, 94-46, 94-126, 95-21, 99-14, 08-85]

9-315 Background investigations. All applicants for an operator's license including any person having a direct or indirect financial interest in the holders of any management contract and their spouses, are subject to a complete background investigation. This requirement is in addition to the background investigation required for a key employee. The cost of such investigation is in addition to the application fee for an operator's license and is payable by the applicant and shall not be considered an operating expense of a gambling operation. If an applicant refuses to cooperate with the commission in any way concerning the background investigation, it shall be within the commission's authority to decline to issue a license, to suspend or revoke an existing license and/or to subject the applicant to appropriate civil penalties authorized under this Title Nine. The results of background investigations shall be made available to the national commission in accordance with the procedures provided under this Title Nine. [TCR 94-37, 94-46]

9-316 Eligibility determination. The commission shall review an applicant's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the eligibility of an applicant for a license as a key employee or operator. If the commission determines that employment of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, the license application shall be denied and no Tribal gaming operation shall employ that person. [TCR 94-37]

9-317 Forwarding applications and reports to the national commission.

1. After a preliminary determination of eligibility has been made regarding applicants for key employee or operator licenses, and provisional licenses have issued, the commission shall forward to the national commission the completed applications aid investigation reports as required by 25 CFR Section 558.3(a)(1).
2. The commission shall expeditiously conduct background investigations and reports referred to in Section 9-318 to the national commission within sixty days after an employee begins work as required by 25 CFR Section 558.3(a)(2) and Section 558.3(b).
3. The gaming operation shall not employ as a key employee or operator a person who does not have a license ninety days after the issuance of a provisional license. [TCR 94-37, 94-46]

9-318 Report to the national commission.

1. Pursuant to the procedures set out in Section 9-317, the commission shall prepare and forward to the national commission an investigative report on each background investigation. An investigative report shall include all of the following:
   a. steps taken in conducting a background investigation;
   b. results obtained;
   c. conclusions reached; and
   d. the basis for those conclusions.
2. The commission shall submit, with the report, a copy of the eligibility determination made under 9-316.
3. If a license is not issued to an applicant, the commission shall forward copies of its eligibility determination and investigation report (if any) to the national commission.
4. With respect to key employees and operators, the commission shall retain applications for employment and reports (if any) of background investigations for inspection by the chairman of the national commission or his/her designee for no less than three years from the date of termination of employment or submission of the application, which ever is longer. [TCR 94-37]

9-319 Granting a gaming license.

1. If, within a thirty-day period after the national commission receives a report, the national commission notifies the Tribe that it has no objection to the issuance of a license pursuant to a license application filed by a key employee or an operator for whom the commission has provided an application and investigative reports to the national commission, the Tribe may issue a license to such applicant. No license shall be valid for longer than three hundred and sixty five calendar days from the date of issue.
2. The commission shall respond to a request for additional information from the chairman of the national commission concerning a key employee or operator who is the subject of a report. Such a request shall suspend the thirty day period under subsection (1) of this Section until the chairman of the national commission receives the additional information.
3. If, within the thirty-day period described above, the national commission provides the Tribe with a statement itemizing objections to the issuance of a license to a key employee or to an operator for whom the commission has provided an application and investigative report to the national commission, the commission shall reconsider the application, taking into account the objections itemized by the national commission. The commission shall make the final decision regarding the application for the license. [TCR 94-37, 94-46]

9-320 Application forms. The following privacy notice shall be placed on the application form for a key employee or operator before that form is filled out by an applicant: "In compliance with the Privacy

Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. 2701, et seq. The purpose of the requested information is to determine the eligibility of individuals to be employed in the gaming operation. The information will be used by national commission members and staff who have need for the information in the performance of their official duties. The information may be disclosed to appropriate federal Tribal, state, local or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations or prosecutions or when pursuant to a requirement by a Tribe or the national commission in connection with the hiring or firing of an employee, the issuance or revocation of a gaming license, or investigations of activities while associated with a Tribe or gaming operation. Failure to consent to the disclosures indicated in this notice will result in a Tribe's being unable to hire you in a primary management official or key employee position. The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing your application."

1. Existing key employees and operators shall be notified in writing within thirty days of the effective date of this amended and restated Title Nine that they shall either:
   a. Complete a new application form that contains a Privacy Act notice; or
   b. Sign a statement that contains the Privacy Act notice and consent to the routine uses described in that notice.
2. The following notice shall be placed on the application form for a key employee or an operator before that form is filled out by an applicant: "A false statement on any part of your application may be grounds for not hiring you, or for firing you after you begin work. Also, you may be punished by fine or imprisonment. (U.S. Code, title 18, Section 1001)."
3. The Tribe shall notify in writing existing key employees and operators that they shall either:
   a. Complete a new application form that contains a notice regarding false statements; or
   b. Sign a statement that contains the notice regarding false statements. [TCR 94-37]

9-321 Burden of proof. The licensee or applicant shall bear the affirmative responsibility to show by clear and convincing evidence that the individual qualifications of the licensee or applicant meet all of the requirements of this Title Nine and the rules. [TCR 94-37]

TITLE 9
ARTICLE 4
CLASS II GAMING

9-401 Gaming regulated. 9-402 Games authorized.

9-401 Gaming regulated. All Class II gaming, as defined by IGRA, 25 U.S.C. Section 2703(7), conducted on the reservation shall be conducted only in licensed gaming operations by licensees. The commission shall monitor all such activities for compliance with this Title and the rules promulgated hereunder, where applicable. [TCR 94-37]

9-402 Games authorized. Only those games that are defined by IGRA 25 U.S.C. Section 2703(7), shall be authorized and shall, collectively, constitute "Class II gaming" for purposes of this Title. [TCR 94-37]

TITLE 9
ARTICLE 5
CLASS III GAMING

9-501 Gaming regulated.
9-502 Games authorized.
9-503 Gaming rules.
9-504 Rules displayed.
9-505 Gaming devices.
9-506 Security.
9-507 Commission rules.
9-508 Right of entry and inspection.
9-509 No credit.
9-510 Notification of violations.
9-511 Surveillance.

9-501 Gaming regulated. All Class III gaming conducted on the reservation shall be conducted only in licensed gaming operations by licensees. The commission shall monitor all such activities for compliance with the compact, this Title Nine and the rules promulgated hereunder. [TCR 94-37]

9-502 Games authorized. Only those games that are authorized under the terms of an applicable compact shall be conducted on the reservation. Such authorized games shall, collectively, constitute "Class III gaming" for purposes of this Title Nine. [TCR 94-37]

9-503 Gaming rules. Any licensee intending to conduct Class III gaming on the reservation shall, prior to conducting any such gaming, submit a complete list of the proposed games, along with comprehensive rules of play pertaining to each such game, to the commission for approval. All approved games shall be conducted only in compliance with the rules approved by the commission. [TCR 94-37]

9-504 Rules displayed. The rules of each authorized game conducted on the reservation must be clearly displayed for public view at or near the place where such game is being conducted. [TCR 94-37]

9-505 Gaming devices. No gaming device may be operated on the reservation without prior certification by the commission in accordance with Article Three of this Title Nine. [TCR 94-37]

9-506 Security. The commission shall, by rules, draft standards and procedures for security of all gaming activity. [TCR 94-37]

9-507 Commission rules. All gaming shall be conducted in compliance with this Title Nine and the rules promulgated hereunder, including:

1. The imposition and enforcement of applicable wager and loss limit;
2. The operation of all Class III gaming activities;
3. Accounting and cash control procedures for all Tribal gaming operations;
4. Security and surveillance standards for all gaming facilities; and
5. The conduct of inspections, investigations and enforcement actions of the commission. [TCR 94-37]

9-508 Right of entry and inspection. The commission, or its agents, shall have the right and authority at any time to enter upon any premises where any gaming is being conducted and inspect any records, equipment and gaming devices contained in such areas. Such right of entry and inspection shall include the right to enter and obtain access to any area within the gaming operation, including all offices, record storage areas and cabinets, computer systems, and computer back-up storage. Accurate duplicate records shall be delivered to the commission as it may direct. Access to computer or other data related to the gaming operation may be restricted by directive of the commission. [TCR 94-37]

9-509 No credit. No licensee shall make or provide a loan or credit of any kind to any participant; provided, however, nothing contained herein shall prevent the acceptance of personal checks and credit cards. [TCR 94-37]

9-510 Notification of violations. A licensee shall, immediately upon discovery, notify a commissioner of any violation or suspected violation of any provision of this Title Nine or the rules. [TCR 94-37]

9-511 Surveillance. In order to insure the integrity of gaming, the commission shall have complete authority over all aspects of the surveillance of the gaming operation. Such authority shall include the power to appoint a surveillance manager, who shall manage the surveillance department at the direction of the commission. The surveillance manager shall report directly to the commission. The surveillance manager's salary and the surveillance department's budget shall be an operating expense of the gaming operation. The commission shall prescribe by rule the duties and authority of the surveillance manager. [TCR 94-37, 94-46]

TITLE 9
ARTICLE 6
VIOLATIONS; PENALTIES

9-601 Role of Tribal prosecutor.
9-602 Tribal Court jurisdiction.
9-603 Prohibited acts.
9-604 Criminal violations penalties.
9-605 Civil violations.
9-606 Civil penalties.
9-607 Consent to jurisdiction.
9-608 Civil actions.
9-609 Administrative hearings.
9-610 Agent for service.

9-601 Role of Tribal prosecutor. The prosecutor of the Winnebago Tribe shall, on behalf of the Winnebago Tribe, prosecute all criminal violations set forth in this Title Nine involving a perpetrator over whom the Tribe has jurisdiction. The prosecutor may enforce any civil violations imposed under this Title Nine. [TCR 94-37]

9-602 Tribal Court jurisdiction. The Tribal Court shall have civil and criminal jurisdiction over all matters arising under this Code or rules promulgated thereunder, whether authorized or unauthorized, occurring on the reservation; provided, however, that this Title Nine is intended only to provide for the jurisdiction of the Tribal Court as is consistent hereunder.

1. A licensee may appeal a ruling of the commission following an evidentiary hearing by filing a notice of appeal with the commission within thirty days of the date of the issuance of the initial ruling.
2. Any licensee who has exhausted the administrative remedies set forth in commission rules 301.14 and 301.15, may, with in thirty days of the date of the commission action, file an appeal to the Winnebago Tribal Court. The commission shall certify the hearing record to the Court within thirty days of the date of the filing of the appeal. The Tribal Court shall review the case on the findings of fact as they appear on the record of the commission hearing. Decisions of the commission interpreting applicable law shall be affirmed unless the Tribal Court finds that the commission's action was arbitrary and capricious. [TCR 94-37, 94-46]

9-603 Prohibited acts. In addition to other civil and criminal acts that may be regulated or prohibited under the Tribal Code or applicable federal law, the following shall constitute prohibited activities under this Title Nine and shall be subject to the penalties set forth in Sections 9-604 and 9-606 below:

1. tampering with any gaming device or taking any action intended to alter the normal play of any licensed game, including attempts to communicate or signal another party in a manner which is intended to alter the normal play of any licensed game;
2. defrauding the Tribe, any licensee or participant in any licensed gaming;
3. knowingly permitting any individual under the age of eighteen to participate in any gaming;
4. permitting persons who are visibly intoxicated to participate in any gaming;
5. participating in any gaming not authorized by this Title Nine;
6. knowingly providing false information or making any false statement with respect to an application for employment or any license application or certification provided for in this Title Nine;
7. knowingly providing false or misleading information or making any false or misleading statement to the Tribe, the Council or the commission in connection with any gaming contract for services or property;
8. knowingly making any false or misleading statement to the commission, in response to any official inquiry by the commission made in the course of its official business;

9. offering or attempting to offer any thing of value, to a licensed person in an attempt to induce that person to act or refraining from acting in any manner related to the official duties of the licensed person in conjunction with any gambling;
10. acceptance by a licensed person of any thing of value with the expectation that receipt of the thing of value is intended, or might be perceived as being intended, to induce the licensee to act or refrain from taking action, in any manner related to the official duties of the licensed person in conjunction with any gaming or gaming operation.
11. falsifying, destroying, erasing or altering any books, computer data, records, or other information relating to a gaming operation or any gaming transaction.
12. taking any action which interferes with or prevents the commission from fulfilling its duties and responsibilities under this Title Nine.
13. entering into any contract, or making payment for any contract for the delivery of goods or services to a gaming operation when such contract fails to provide for or result in the delivery of goods or services of fair value for the payment made or contemplated. [TCR 94-37, 94-46]

9-604 Criminal violations; penalties. Any person who violates or fails to comply with, obey or observe any provision of this Title Nine or any rule, order or directive of the commission shall be guilty of a Class II offense under the Code; provided, however, that any person who commits any act described in Section 9-603 shall be guilty of a Class I offense under the Code. Each day during which violation or failure to comply occurs or is continuing shall constitute a separate violation under this Title Nine. The prosecution of an offense under this Section shall be the responsibility of the Tribal prosecutor. [TCR 94-37, 94-46]

9-605 Civil violation. Any person who violates or fails to comply with any rule, any provision of this Title Nine, makes false or misleading statements or omissions in any application filed under this Title Nine may be found by the commission to be liable for the civil penalties set forth below. [TCR 94-37, 94-46, 06-24]

9-606 Civil penalties. For any violation described in Section 9-605, the violator may be subject to suspension and/or revocation of any license granted under this Title Nine, may be subject to exclusion from any Tribal gaming facility, and may also be liable for a civil penalty in an amount not to exceed five thousand dollars ($5,000) for each violation. Each day during which violation or failure to comply occurs or is continuing may be found to constitute a separate violation under this Title Nine. The commission may rescind or reduce any penalties imposed by the commission by its own motion or for good cause shown. [TCR 94-37]

9-607 Consent to jurisdiction. Any person who applies for any license or employment with the casino, enters into any contract or agreement with the casino, or any gaming operation, participates in any gaming on the reservation consents and shall be deemed to consent to the civil jurisdiction of the Tribe, the commission and the Tribal Court. [TCR 94-37, 94-46, 06-24]

9-608 Civil actions. The commission, on behalf of the Winnebago Tribe, shall bring suit in the appropriate forum for the collection of any fines due hereunder and for the enforcement of any provision of this Title Nine. [TCR 94-37]

9-609 Administrative hearings. The commission may hold administrative hearings to resolve any issue arising under this Title Nine. The commission shall promulgate rules under which such hearings shall be conducted. In order to fully exercise the power granted under this Section, the commission may issue subpoenas in accordance with the rules promulgated under this Title Nine. [TCR 94-37]

9-610 Agent for service. The Tribal chairman shall be designated as the agent for service for the Winnebago Tribe of Nebraska. [TCR 94-37]

TITLE 9
ARTICLE 7
MISCELLANEOUS PROVISIONS

9-701 Sovereignty not waived.
9-702 Audits.
9-703 Contracts subject to audit.
9-704 Public safety.
9-705 Unclaimed winnings.
9-706 Saving clause.
9-707 Short title.
9-708 Repeal of prior law.
9-709 Customer disputes.
9-710 Customer rights regarding disputes.
9-711 Gaming commission action on customer disputes.
9-712 Right to exclude or remove.
9-713 Review and approval of gaming contracts.

9-701 Sovereignty not waived. Nothing contained in this Title Nine is intended to, nor shall it have the effect of, in any way waiving, limiting or diminishing the sovereignty or sovereign immunity of the Winnebago Tribe. [TCR 94-37]

9-702 Audits. Audits of all Tribal gaming operations shall be conducted at least annually by an outside, independent, certified public accountant. Such audits shall be provided by the Tribe to the national commission. Additional audits shall be performed in accordance with commission rules. [TCR 94-37]

9-703 Contracts subject to audit. All contracts for supplies, services, or concessions for a contract amount in excess of twenty five thousand dollars ($25,000) annually (except contracts for professional legal or accounting services) relating to Tribal gaming operations shall be subject to the audits required by Section 9-702 of this Title Nine and the rules promulgated hereunder. Additionally, an applicant or holder of an operators license has a duty to provide written disclosure to the commission of all collateral agreements. Such duty shall be a continuous requirement of licensure and shall not be limited to the disclosure required under Section 9-303(14). If such disclosure is not made, then all contracts which were not disclosed shall be considered void and unenforceable and the person or entity failing to make such disclosure may be subject to license suspension, revocation or civil penalties. [TCR 94-37]

9-704 Public safety.

1. The construction and maintenance of any gaming facility existing on the reservation and the operation of any such gaming operation shall be conducted in a manner which adequately protects the public health and safety.
2. It shall be the responsibility of the Council and the commission to insure that the standard set forth in part (1) of this Section is maintained at all times. [TCR 94-37]

9-705 Unclaimed winnings.

1. Any winnings, whether property or cash, which are due and payable to a participant but remain unclaimed at the end of a gaming session shall be held in safekeeping for the benefit of such participant if his/her identity is known. Such winnings shall be held for twelve months or such longer period as the commission deems reasonable in consideration of all relevant facts and circumstances. The commission shall make such efforts as are reasonable under the circumstances to locate such individual. At the end of the safekeeping period, such winnings shall revert to Tribal ownership and shall be transferred to the account or place designated by the Council.

2. In the event the identity of the participant entitled to unclaimed winnings is unknown, the commission shall use its best efforts to learn the identity of such individual and shall follow the procedure set forth in (1), above, if they are able to identify such individual with reasonable certainty provided, however, if after six months from the time the winnings were payable, the commission has been unable to identify an individual entitled thereto, such winnings shall revert to Tribal ownership as set forth in paragraph (1) of this Section. [TCR 94-37]

9-706 Saving clause. If any section or provision of this Title Nine is invalidated for any reason by a Court of competent jurisdiction, the remaining provisions shall not be affected thereby. [TCR 94-37]

9-707 Short title. This Title shall be known as the "Winnebago Gaming Code." [TCR 94-37]

9-708 Repeal of prior law. This Title Nine replaces all prior laws and rules pertaining to the authorization or regulation of gaming activity on the reservation. All such laws and rules are specifically repealed. [TCR 94-37]

9-709 Customer disputes. Any person who has any dispute, disagreement or other grievance that involves currency, tokens, coins, or any other thing of value and is between the customer or player and the gaming operation, may raise such dispute with the following persons and in the following order: (a) a member of the staff of the gaming operation, (b) the supervisor in the area in which the dispute arose, (c) the general manager of the gaming operation and (d) the gaming commission. [TCR 94-37]

9-710 Customer rights regarding disputes. At each level, the complainant has the right to explain his/her side of the dispute, and to present witnesses in connection with any factual allegation. At each level, if the dispute remains unresolved, the complainant shall be informed of the right to take the dispute to the next higher level as set forth in Section 9-709. Resolution of any dispute by staff of the gaming operation shall always involve two or more staff members. All disputes, whether resolved or not, shall be the subject of a detailed report by all staff involved to their supervisor, or, in the case of the general manager of the gaming operation to the commission. [TCR 94-37]

9-711 Gaming commission action on customer disputes. All disputes which are submitted to the gaming commission shall be decided by the commission based on information provided by the complainant, any witnesses for or documents provided by the complainant, or by the general manager of the gaming operation or any other person who has relevant information to provide. The decision of the commission shall be in writing, shall be issued within fourteen days of submission of the matter to the commission and shall be provided to the general manager of the gaming operation and the complainant. [TCR 94-37]

9-712 Right to exclude or remove. The commission, or the general manager of the gaming operation, subject to review by the commission may exclude or remove any persons from the premises of the gaming operation. Any person excluded shall be entitled to a hearing as provided by the rules. [TCR 94-37, 94-46]

9-713 Review and approval of gaming contracts.

1. All contracts and transactions for goods and services purchased or provided to any Gaming Operation shall be signed by the General Manager and reviewed by the Commission. All contracts and transactions for goods and services to any provider shall be in writing and shall be delivered to the Commission, along with sufficient information to permit adequate review under this Section, as soon as possible.

2. No contract or transaction for goods or services requiring single or aggregate payments in excess of $10,000.00 shall be valid unless first approved by the Gaming Commission. The Gaming Commission shall be deemed to have approved a contract or transaction if it takes no action on said contract or transaction within five days after receipt. Date of receipt shall be documented by a stamp receipt promulgated by the Commission. The Gaming Commission shall stamp each contract as received within 24 hours of actual receipt. In determining whether a contract or transaction should be approved, the commission shall consider:
   a. whether the contract or transaction is legally sufficient;
   b. whether the contract or transaction provides for a price which is commercially reasonable and competitive;
   c. whether the contract or transaction is entered into by parties who appear to be dealing at arms length and without undue influence or favoritism;
   d. whether the Gaming Operation has or will receive fair value for the goods or services made or contemplated; and
   e. the business need for such goods or services.

   In the event the Commission disapproves a contract it shall set forth a statement of the specific reasons for disapproving in writing and forward said statement to the General Manager, who shall be given the opportunity to correct any deficiencies and resubmit and resubmit the contract to the Commission for further consideration. The Commission may then reevaluate the contract or transaction and either approve or disapprove same. If it again disapproves the contract or transaction, these steps may be repeated until any deficiencies are cured or the Commission deems the contract incurable. Any decision to disapprove a contract by the Gaming Commission shall be final and not subject to appeal: except to the Tribal Council.
3. No contract or transaction for goods or services requiring a single or aggregate payments in excess of $25,000.00 shall be valid unless, in addition to the approval needed pursuant to § 9-713(c), the contract or transaction is approved by the Winnebago Tribal Council at a duly convened meeting.
4. The Gaming Operation shall obtain an inked stamp which shall be imprinted with red ink as follows:

   NOTICE

   CONTRACTS FOR PURCHASE OF GOODS OR SERVICES OVER $10,000.00 IN VALUE ARE VALID ONLY WITH APPROVAL OF G.M. AND WINNEBAGO GAMING COMMISSION. PURCHASES OVER $25,000.00 MUST ALSO BE APPROVED BY TRIBAL COUNCIL.

5. No cash payments to providers of goods or services from the funds of any gaming operation are authorized. Cash payments to providers of goods or services from the gaming operation are prohibited. [TCR 06-38]

TITLE 10
GENERAL REVENUE AND TAX CODE
(As amended February 17, 2010)

SUMMARY OF CONTENTS

SECTION	ARTICLE-PAGE
1. TABLE OF REVISIONS	ii
2. TABLES OF CONTENTS	iii
3. ARTICLE 1: TAXATION	1-1
4. ARTICLE 2: SALES TAX	2-1
5. ARTICLE 3: GASOLINE TAX	3-1
6. ARTICLE 4: CONSTRUCTION TAX	4-1
7. ARTICLE 5: BINGO TAX [REPEALED]	5-1
8. ARTICLE 6: TOBACCO TAX	6-1
9. ARTICLE 7: HOTEL LODGING TAX	7-1

TITLE 10
TABLE OF REVISIONS

The following table is included in this title as a guide for determining whether each article properly reflects the current version. This table will be updated with the revision of each article.

Through usage and supplementation, pages in bound titles can be inserted and removed when sections are revised on an article-by-article basis. This table should be placed before the Table of Contents in the title.

The "Article" column lists each article, and the "Section" column lists any corresponding sections that have been revised, in sequence. The "Revised Date" column reflects the effective date of the revision (e.g., "6/20/15"). If an article is not listed in the table, it has not been revised since the December 2015 Winnebago Tribal Code update and distribution.

Article	**Section**	**Revised Date**
2	202	12/22/15 (effective 1/1/16)
3	301	12/22/15 (effective 1/1/16)
5	500, 501	12/22/15 (effective 1/1/16)
6	600-609	12/22/15 (effective 1/1/16)
7	700-701, 703-708	12/22/15 (effective 1/1/16)

TITLE 10
GENERAL REVENUE AND TAX CODE
(As amended February 17, 2010)

TITLE 10
ARTICLE 1
TAXATION

10-101 Citation.
10-102 Purpose.
10-103 Tax Commission.
10-104 Composition of the Tax Commission.
10-105 Seal.
10-106 General Powers of the Tax Commission.
10-107 Rulemaking Authority.
10-108 Forms.
10-109 Tax Stamps and Licenses.
10-110 Records.
10-111 Bookkeeping.
10-112 Collection Account; Deposits.
10-113 Tax Commission Employees and Expenses.
10-114 Nepotism.
10-115-10-119 Reserved.
10-120 Collection of Taxes.
10-121 Collection of Delinquent Taxes.
10-122 Other Remedies.
10-123 Inventory of Seized Property.
10-124 Public Sale of Forfeited Property.
10-125 Exempt Property.
10-126-10-150 Reserved.
10-151 Administrative Appeals.
10-152 Limitations on Administrative Appeals.
10-153 Exhaustion of Administrative Remedies.
10-154 Suits against the Tax Commission.
10-155 Limitations on Suits against the Tax Commission.
10-156 Refunds to Taxpayers.
10-157-10-180 Reserved.
10-181 Forgery of Stamps or other tax instruments.
10-182 Offenses.
10-183 General Penalties.
10-184 Referrals for Federal Prosecution.
10-185 Interest.
10-186 Commencement of Actions.
10-187 Taxes Erroneously paid.
10-188 Penalties.
10-189 Records.

TITLE 10
ARTICLE 2
SALES TAX

10-200 Definitions.
10-201 Tax on sales of goods.
10-202 Exceptions.
10-203 Impact of tax.
10-204 Payment of tax.
10-205 Permit System.

TITLE 10
ARTICLE 3
GASOLINE TAX

10-300 Definitions.
10-301 Tax on sales of gasoline.
10-302 Exceptions.
10-303 Impact of tax.
10-304 Collection of tax.
10-305 Payment of tax.

TITLE 10
ARTICLE 4
CONSTRUCTION TAX

10-400 Definitions.
10-401 Construction Tax.
10-402 Subcontractors.
10-403 Payment Requirements.
10-404 Material Purchase Certificates.
10-405 State and Local Taxation.

TITLE 10
ARTICLE 5
BINGO TAX
[Repealed January 1, 2016]
[TCR 05-39, 16-39]

TITLE 10
ARTICLE 6
TOBACCO TAX

10-600 Definitions.
10-601 Sales of Tribal Cigarettes.
10-602 Internet Sales of Tribal Cigarettes.
10-603 Other Tribal Tobacco Products.
10-604 Compact Exceptions.
10-605 Wholesale Exceptions.
10-606 Impact of Tax.
10-607 Tax Collection.
10-608 Payment of Tax.
10-609 Effective Date.

TITLE 10
ARTICLE 7
HOTEL LODGING TAX
(As adopted January 16, 2012)

10-700 Definitions.
10-701 Imposition of Tax and Fee; Exemptions.
10-702 Records.
10-703 Returns.
10-704 Payment of Tax.
10-705 Assessment and Determination of Tax.
10-706 Notices.
10-707 Licenses and Registration.
10-708 Interest and Penalties.
10-700 Definitions.
10-705 Assessment and Determination of Tax.

TITLE 10
ARTICLE 1
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10-101 Citation.
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10-103 Tax Commission.
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10-105 Seal.
10-106 General Powers of the Tax Commission.
10-107 Rulemaking Authority.
10-108 Forms.
10-109 Tax Stamps and Licenses.
10-110 Records.
10-111 Bookkeeping.
10-112 Collection Account; Deposits.
10-113 Tax Commission Employees and Expenses.
10-114 Nepotism.
10-115-10-119 Reserved.
10-120 Collection of Taxes.
10-121 Collection of Delinquent Taxes.
10-122 Other Remedies.
10-123 Inventory of Seized Property.
10-124 Public Sale of Forfeited Property.
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10-152 Limitations on Administrative Appeals.
10-153 Exhaustion of Administrative Remedies.
10-154 Suits against the Tax Commission.
10-155 Limitations on Suits against the Tax Commission.
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10-183 General Penalties.
10-184 Referrals for Federal Prosecution.
10-185 Interest.
10-186 Commencement of Actions.
10-187 Taxes Erroneously paid.
10-188 Penalties.
10-189 Records.

10-101 Citation. This Article may be cited as the Winnebago Tribal Tax Code. [TCR 05-39]

10-102 Purpose. It being necessary to strengthen the Tribal government by licensing and regulating certain conduct within the Tribal jurisdiction, provide financing for the current expenses of Tribal government and the expansion of Tribal government operations and services, and in order for the Tribe to exercise its confirmed governmental responsibilities efficiently and effectively, the purpose of this Article is to provide the straightforward, fair, and efficient procedures, to provide for the licensing and regulation of certain conduct, and the levy and collection of certain revenue and taxes for the benefit of the Winnebago Tribe. [TCR 05-39]

10-103 Tax Commission. There is hereby created, ordained, and chartered under the authority of the Constitution of the Winnebago Tribe of Nebraska a body to be known as the "WINNEBAGO TAX COMMISSION" which shall be a public agency of the Winnebago Tribe of Nebraska subordinate to the Tribal Council, possessing all the powers, duties, rights and functions hereinafter defined and as are now or as may hereafter be conferred upon the Commission by law. [TCR 05-39]

10-104 Composition of the Tax Commission.

1. The membership of the Winnebago Tax Commission shall consist of the Vice-Chairperson of the Tribal Council who shall serve as the Chairperson of the Commission, the Treasurer of the Tribal Council and three (3) members of the Tribe who shall be appointed by the Tribal Council for a period of three (3) years.

2. Upon the selection of the initial commission members appointed by the Winnebago Tribal Council, the Tribal Council shall choose, by lot, one commissioner who will serve an initial term of one year, one commissioner who will serve an initial term of two years and one commissioner who will serve an initial term of three years. Thereafter, the term of each appointed commissioner shall be for three years. The terms of the Vice-Chairperson and the Treasurer of the Tribal Council shall expire if such commissioner's term as Vice-Chairperson or Treasurer of the Winnebago Tribal Council expires. Subject to the proviso of the preceding sentence, each director shall hold office until the expiration of the term to which he was elected and until his successor has been selected and qualified. Vacancies on the commission shall be filled by the Winnebago Tribal Council.
3. Members of the Tax Commission shall not have or voluntarily acquire during their three (3) year term any personal interest, as hereinafter defined, whether direct or indirect, in any entity owned or operated by the Winnebago Tribe of Nebraska or any Tribal organization.
4. Personal interest shall mean private ownership of an entity that does business with or is operated by the Winnebago Tribe. Employment by an entity owned by the Winnebago Tribe, its agencies, institutions, or entities or by any other person having such an interest shall not be deemed a personal interest by such employee nor shall it be deemed ownership or control of such entity by the employee. Such an employee may be appointed as a member of the Tax Commission so long as net revenues from the operation of the entity accrue to the Tribe generally. [TCR 05-39]

10-105 Seal. The Winnebago Tax Commission is authorized and directed to acquire and use a seal, which shall be of circular form, with the words "TAX COMMISSION" – "WINNEBAGO TRIBE OF NEBRASKA" around the edge and the word "OFFICIAL SEAL" in the center. The seal shall be used on all original and or certified copies of all licenses, orders, rules, regulations and other "official" documents of the Tax Commission as evidence of their authenticity. The seal shall be secured at all times to prevent unauthorized use. [TCR 05-39]

10-106 General Powers of the Tax Commission. The Tax Commission shall generally be charged with the administration and enforcement of all Tribal tax laws. Incidental to the administration or enforcement of the Tribal tax laws, the Tax Commission shall have the power to:

1. Assess, collect and issue receipts for such taxes as are imposed by ordinance or resolution of the Winnebago Tribal Council and to bring actions on behalf of the Tribe in Tribal Court for the collection of Tribal taxes, penalties and interest, and the enforcement of the Tribal tax laws, all such actions shall be styled: The Winnebago Tribe of Nebraska ex rel. Tax Commission vs. _____;
2. Administer oaths, conduct hearings and by subpoena to compel the attendance of witnesses and the production of any books, records and papers of any taxpayer relating to the enforcement of the Tribal tax laws.
3. Make or cause to be made by its agents or employees an examination or investigation of the place of business, equipment, facilities, tangible personal property and the books, records, vouchers, accounts, documents and financial statements of any taxpayer, upon reasonable notice during normal business hours, at any other time agreed to by said taxpayer or at any time pursuant to a search warrant issued and signed by the Tribal Court.
4. Examine under oath either orally or in writing any taxpayer or any agent, officer or employee of any taxpayer or any other witness in respect to any matter relative to the Tribal tax laws.
5. Exercise all other authority delegated or conferred upon it by law or as may be reasonably necessary in the administration or enforcement of any Tribal tax laws.
6. Either before or after the commencement of an action for the recovery of taxes, penalties and interest due to the Tribe, but prior to final judgment thereon, compromise and settle such claims for an amount less than the total amount due, provided that such compromise and settlement shall

be approved by the Tax Commission only when, in its judgment such action is in the best interest of the Tribe and provided further that no settlement shall be made unless the delinquent taxpayer pays the principal amount of taxes due to the Tribe. [TCR 05-39]

10-107 Rulemaking Authority.

1. The Tax Commission shall have the authority to prescribe, promulgate and enforce written rules and regulations not inconsistent with this Title to (a) provide for its internal operational procedures; (b) to interpret or apply any Tribal tax laws as may necessary to ascertain or compute the tax owed by any taxpayer; (c) for the filing of any reports or returns required by any Tribal tax laws; (d) as shall be reasonably necessary for the efficient performance of its duties; or (e) as may be required or permitted by law.
2. No rule or regulation of the Tax Commission shall be of any force or effect until and unless a certified copy of said rule or regulation bearing the signatures of at least two (2) members of the Tax Commission and the "official seal" of the Tax Commission shall have been filed for record in the office of the Tribal Council Secretary and the office of the Clerk of the Tribal Court.
3. The Tribal Court shall take judicial notice of all rules and regulations of the Tax Commission promulgated pursuant to this Title. [TCR 05-39]

10-108 Forms. The Tax Commission may prepare and make available to the public such standard forms as are or may be necessary to carry out its function and which are not otherwise provided by this Title. [TCR 05-39]

10-109 Tax Stamps and Licenses.

1. The Tax Commission shall provide for the form, size, color and identifying characteristics of all licenses, permits, tax stamps, tags, receipts or other documents or things evidencing receipt of any license or payment of any tax or fee administered by the Tax Commission or otherwise showing compliance with the tax laws of the Winnebago Tribe of Nebraska.
2. Such stamps or licenses shall contain at least the following information:
   a. The words: "Winnebago Tribe."
   b. The words: "Tax Commission."
   c. The monetary amount for which the tax or license was issued.
   d. Wording which indicates the type of tax imposed.
   e. If the instrument is a license, permit or receipt, wording indicating the type of license, permit or receipt, its effective dates and the name and address of the taxpayer to whom issued.
3. The Tax Commission shall provide for the manufacture, delivery, storage and safeguarding of such stamps, licenses, permits, tags, receipts or other documents and shall safeguard such instruments against theft, counterfeiting and improper use.
4. When the Tax Commission deems it necessary to do so, it may allow the use of metering devices in lieu of paper stamps under such rules and regulations as it shall prescribe.
5. The Tax Commission may exchange new stamps for damaged, out of date or otherwise unusable stamps under such rules and regulations as the Tax Commission shall prescribe. [TCR 05-39]

10-110 Records.

1. The Tax Commission shall keep and maintain accurate, complete and detailed records that reflect all taxes, penalties and interest levied, due and paid, all licenses issued and each and every official transaction, communication or action of the Commission.

2. Such records shall be maintained at the office of the Tax Commission and shall not be removed from said office without the written permission of the Tax Commission.
3. Such records shall be subject to audit at any time at the direction of the Tribal Council and shall be audited not less than once each year.
4. Any and all records of the Tax Commission, except the record of an official decision or opinion rendered upon administrative appeal, which relate to the individual business or personal activities of a named particular taxpayer or taxpayers shall not be open to public inspection and shall only be released upon written request of the taxpayer involved, written request of Tribal officials who have a legitimate official need for such records or upon the written order of the Tribal Court.
5. Any record of the Tax Commission which does not relate to the individual business or personal activities of a named particular taxpayer or taxpayers and all decisions or opinions rendered upon an administrative appeal shall be public records of the Tax Commission and shall be available for public inspection during regular business hours. Copies of such records may be obtained by submitting a signed written request and upon payment of such copying costs as may be established by rule of the Tax Commission, provided, that the names and other forms of identification of any taxpayer appearing in such record shall be rendered unreadable prior to issuance of such copy unless the provisions of subsection (d) above would allow release of such information. [TCR 05-39]

10-111 Bookkeeping. There shall be established and kept, within the Finance Department of the Winnebago Tribe and subject to the current Indirect Cost rate, such financial records/books as may be necessary under generally accepted accounting standards to adequately account for all funds and monies received and disbursed by the Tax Commission. Separate accounting books shall be maintained for each type of tax imposed and collected under this Title. [TCR 05-39]

10-112 Collection Account; Deposits.

1. There is hereby authorized to be established an account in a federally insured financial banking institution to be known as the Winnebago Tax Collection Account. Tax funds may be kept in an existing federally insured Tribal account provided separate accounting books, clearly designated as Winnebago Tax Collection Funds, are maintained in accordance with generally accepted accounting standards.
2. Tax revenues shall be kept in an interest bearing account and the funds may be invested and reinvested as may be deemed necessary and approved by the Tribal Council.
3. No monies shall be expended from this fund except upon written resolution of the Tribal Council appropriating a specific amount or source of monies contained therein for the use of a particular department, agency, program or project of the Tribe or in accordance with an approved Tax Commission budget as set forth in Section 10-113. Expenditures from this fund will be made utilizing current procedures established by the Tribal Finance Department.
4. All tax monies, license fees, penalties, interest, service fees/charges or other funds collected by the Tax Commission in the administration and enforcement of the Title shall be clearly identified and submitted to the Tribal Finance Department for deposit in this account for the benefit of the Winnebago Tribe. The receipt for such funds shall be maintained as an original record and attached to or reconciled with any original tax returns or records of receipt of the Tax Commission. [TCR 05-39]

10-113 Tax Commission Employees and Expenses.

1. The Tax Commission may employ such employees and incur such expense as may be necessary and reasonable for the proper discharge of its duties under this Title, subject to the limitations and restrictions herein set out.

2. The Tax Commission shall, to the maximum extent feasible, utilize regular Tribal staff in exercising the duties and responsibilities set out in this Title. The Tax Commission shall coordinate with and obtain approval from Tribal Administration to delegate to Tribal staff such of its functions as may be necessary to efficiently administer this Title. Any such delegation of functions by the Tax Commission shall be done by rule, provided that the Commission's rulemaking authority may not be delegated.
3. Tribal Administration is authorized and directed to cause such regular staff assistance, as is feasible, to be given to the Tax Commission.
4. The Tax Commission shall prepare and submit to the Tribal Council a proposed line item budget for the next fiscal year no later than the deadline established in each year by the Tribal Council Treasurer for regular Tribal appropriation requests. The total amount dispersed by the Tax Commission in any one fiscal year may not exceed the amount appropriated by the Tribal Council.
5. The fiscal year for operation of the Tax Commission shall begin on October 1 of each year and end on September 30 of the following year.
6. The Tax Commission may require each staff person who shall be required to handle monies, revenue, tax stamps or who shall be responsible therefore to be insured under the Tribal insurance policy, in such amounts as may be fixed by the Tax Commission.
7. The Tribal Council may require each of the Tax Commission members who shall be required to handle monies, revenue or stamps to be insured under the Tribal insurance policy in an amount to be determined by the Tribal Council.
8. The premiums for the insurance required in (6) and (7) of this Section shall be paid from funds authorized in the Tax Commission budget. [TCR 05-39]

10-114 Nepotism.

1. It shall be unlawful for the Tax Commission to employ any person related to any member of the Tax Commission by blood or marriage within the third degree to any office within the Tax Commission or to any position as an outside or independent contractor. This provision shall not prohibit any officer, appointee or employee already in the service of the Tax Commission from continuing or being promoted after the appointment or election of a relative to membership on the Tax Commission as provided by law.
2. The Tribal Council may provide a waiver of this Section by two-thirds (2/3) majority vote in individual cases at the written request of the Tax Commission, if the Tribal Council determines such waiver to be in the best interest of the Tribe. [TCR 05-39]

10-115–119 Reserved. [TCR 05-39]

10-120 Collection of Taxes.

1. All taxes payable under this Article shall be tendered to the Winnebago Tax Commission, who shall promptly issue receipt.
2. The Tax Commission shall establish such rules and procedures as may be necessary to assess taxes, provide notice to taxpayers and collect monies owed. [TCR 05-39]

10-121 Collection of Delinquent Taxes. The Tax Commission is hereby authorized to bring legal action in any appropriate Court as necessary for the collection of any taxes, penalties and interest assessed and unpaid by any taxpayer. Such action shall be civil in nature and all penalties and interest shall be in the form of civil damages for non-payment of taxes. Any and all civil remedies, including but not limited to garnishment, seizure, attachment and execution shall be available for the collection of any monies due the Tribe. The Tax Commission may request the Attorney General of the Tribe to bring any and all

necessary actions for the collection of any taxes, penalties and interest assessed and unpaid against any taxpayer. [TCR 05-39]

10-122 Other Remedies.

1. In addition to the remedies available for the collection of monies, the Tax Commission is authorized to bring in any appropriate Court an action to enjoin the beginning or operation of any unlicensed business, activity or function where and when Tribal tax law requires a license to be issued for such business, activity or function.
2. In addition to the remedies available for the collection of monies, the Tax Commission is authorized through its members and/or staff, when accompanied by a law enforcement officer and an order issued by the Tax Commission to seize any property declared contraband by any section of this Title or upon which any tax levied is in excess of 60 days past due or delinquent under the same conditions, limitations and exceptions as evidence of crimes may be searched for and seized, provided that within ten (10) working days of such seizure, the Tax Commission shall cause to be filed an action against said property alleging the non-payment of tax or other lawful reason for such seizure and forfeiture. The Court, upon proof, shall order such property forfeited for non-payment of taxes and title/ownership thereto is vested in the Winnebago Tribe, provided that any person claiming ownership, the right of possession or other interest in said property may intervene in said action and raise any defenses they may have. Such persons shall be served with process, if they are known prior to the beginning of the action, provided further, that such persons may redeem said property at any time prior to final judgment of forfeiture by depositing all taxes, penalties and interest assessed or owing with the Court. [TCR 05-39]

10-123 Inventory of Seized Property. Whenever an authorized person pursuant to Section 10-122 of this Title seizes any property, he/she shall inventory and appraise such property and leave a written copy thereof with the person from whom it was seized or, if such person cannot be found, a copy shall be posted at the place from which the property was seized. The original of said inventory shall be retained in the Tax Commission office and a copy provided to the Tribal Attorney General. [TCR 05-39]

10-124 Public Sale of Forfeited Property.

1. Upon a final order of forfeiture entered by the Tribal Court, the Tax Commission shall circulate and post for public inspection an inventory of said property. This posting shall identify the date and time for the sale of said property to the highest bidder.
2. The order of forfeiture tax sale notice shall be posted for a minimum of twenty (20) days prior to the date of sale and the notice shall also be published at least once in the local newspaper.
3. The property shall be sold to the highest bidder at a public auction with the sale to be held at the administrative office building of the Tax Commission.
4. All revenue derived from the sale shall be deposited in the Tax Collection Account.
5. The Tax Commission may conduct sales at such times as it deems sufficient property has accumulated to make such sale beneficial to the Tax Commission and the taxpayer.
6. The seizure and forfeiture of contraband property shall not reduce or eliminate the tax liability of any person from whom such property was seized. The funds derived from the sale of all other property shall be applied to payment of the interest and penalties first, then to the tax due. If the funds derived from the sale do not satisfy the total amount of interest, penalties and tax due, then the taxpayer remains liable for the balance due the Tax Commission. In no circumstance shall the taxpayer receive any excess funds received from the sale after the interest, penalties and tax obligations have been satisfied, and any and all remaining funds shall become the property of the Tribe. [TCR 05-39]

10-125 Exempt Property. The following property shall be exempt from garnishment, attachment, execution and sale for the payment of taxes, penalties and interest due to the Tribe:

1. Three-fourths (3/4) of the net wages earned per week by the taxpayer.
2. One automobile with the fair market value equity not exceeding five thousand dollars ($5000.00).
3. Tools, equipment, utensils or books necessary to the conduct of the taxpayer's business or activities, but not including stock or inventory.
4. Actual Trust or Restricted title to any lands held in trust by the United States or subject to restrictions against alienation imposed by the United States, but not including leasehold and other possessor interests in such property.
5. Any dwelling used as the actual residence of the taxpayer including up to five acres of land upon which such dwelling is located whether such dwelling is owned or leased by the taxpayer.
6. Household goods, furniture, wearing apparel and personal effects, but not including televisions, radios, stereo equipment, tape recorders, more than two (2) firearms, works of art and other recreational or luxury items.
7. All domesticated animals.
8. All implements of farming used on the property.
9. All traditional, ceremonial and/or religious items. [TCR 05-39]

10-126–10-150 Reserved. [TCR 05-39]

10-151 Administrative Appeals. Any taxpayer against whom the Tax Commission has assessed taxes, penalties or interest pursuant to the tax law of the Winnebago Tribe of Nebraska or who has paid under written protest any taxes, penalties and interest assessed by the Tax Commission who believes those taxes, penalties and interest to be wrongfully assessed or collected may appeal in writing for a hearing before the full Tax Commission under such rules and regulations as the Tax Commission may prescribe. [TCR 05-39]

10-152 Limitations on Administrative Appeals. Any administrative appeal as provided for in Section 151 of this Title must begin by filing a written request for a hearing with the Tax Commission within sixty (60) days of the assessment or payment of the taxes, penalties or interest in controversy, provided that failure to file an administrative appeal shall not prevent the taxpayer from defending any collection action by the Tax Commission in Tribal Court. [TCR 05-39]

10-153 Exhaustion of Administrative Remedies.

1. All administrative remedies shall be deemed exhausted upon a final decision of the Tax Commission of an appeal pursuant to Section 10-151 of this Title.
2. If the Tax Commission shall fail to schedule and hold a hearing on the merits of the administrative appeal within sixty (60) days after receipt of a written request for a hearing, unless a delay is requested or approved by the taxpayer.
3. If the Tax Commission shall fail to issue a written decision on said appeal within thirty (30) days of the hearing on the merits of the taxpayer's administrative appeal. [TCR 05-39]

10-154 Suits Against the Tax Commission.

1. The Tax Commission, as a governmental agency of the Winnebago Tribe of Nebraska, its Commissioners, and employees, shall be immune from any suit in law or equity while performing their lawful duties within the authority delegated to them.
2. Notwithstanding subsection (1), any taxpayer or other person against whom the Tax Commission has assessed taxes, penalties or interest or who has paid under protest any taxes, penalties or

interest, may bring an action in Tribal Court after exhaustion of administrative remedies for the purpose of enjoining the Tax Commission from collecting any taxes, penalties or interest assessed or for the recovery of any taxes, penalties or interest paid under written protest which the Tribal Court determines to have been wrongfully assessed or collected. [TCR 05-39]

10-155 Limitations on Suits Against the Tax Commission.

1. Any suit against the Tax Commission authorized by Section 10-154 must be commenced by filing a petition in Tribal Court within thirty (30) days after the days of exhaustion of administrative remedies.
2. In no event shall the Court be authorized to award or order the payment of damages or to fashion any remedy except to enjoin the collection or order the return of the taxes, penalties or interest in controversy unless an additional remedy is specifically provided by this Title.
3. All amounts found to have been wrongfully collected and refundable shall earn simple interest at five percent (5%) per annum until refunded. [TCR 05-39]

10-156 Refunds to Taxpayers. Whenever any taxpayer shall establish in administrative or Court proceedings that they are entitled to a refund of any taxes, penalties or interest previously paid, the Tax Commission shall immediately refund all taxes, penalties and interest specified in the administrative or Court order. [TCR 05-39]

10-157–10-180 Reserved. [TCR 05-39]

10-181 Forgery of Stamps or other tax instruments. Any person or taxpayer who without authorization of the Tax Commission, falsely or fraudulently forges, embezzles, steals, knowingly converts, knowingly misapplies or permits to be applied or counterfeits any stamps, tags, licenses or other instrument evidencing payment of taxes prescribed for use in this Title or who shall use, pass, tender as true or otherwise be in possession of any unauthorized, false, altered, forged, counterfeited or previously used instrument for the purpose of evading the payment of taxes imposed by this Title shall forfeit a civil penalty as provided in Section 10-188 of this Title. Each such counterfeited, embezzled, stolen, converted, misapplied or forged stamp or other instrument shall each constitute a separate violation. [TCR 05-39]

10-182 Offenses. Any person or taxpayer who violates any provision of the Title for the purpose of evading the payment of taxes shall be guilty of an offense punishable by imprisonment for a term not to exceed three (3) months and/or a fine not to exceed Five Hundred ($500.00) dollars or both such imprisonment and fine for each separate violation. [TCR 05-39]

10-183 General Penalties. Any person or taxpayer who files any false report or return or who fails to file any report or return or who otherwise violates any provisions of this Title for the purpose of evading the payment of taxes imposed by this Title shall forfeit a civil penalty of not more than Five Hundred ($500.00) dollars for each such violation in addition to any other penalties prescribed by law. [TCR 05-39]

10-184 Referrals for Federal Prosecution. It shall be the duty of all members of the Tax Commission, the Tribal Attorney General and any law enforcement officer upon receiving reliable information that probable cause may exist to believe that any person or taxpayer has violated Section 10-181 of this Title to report the facts to the appropriate Federal officials and to request that a federal investigation be commenced to determine whether 18 U.S.C. Section 1163, Embezzlement and Theft from Indian Tribal Organizations, has been violated. [TCR 05-39]

10-185 Interest. All taxes, fees, or other charges of the Tax Commission not paid when due shall bear interest at the rate of twelve percent (12%) per annum from the date said taxes or fees became due until the date they are paid in full. [TCR 05-39]

10-186 Commencement of Actions. Filing a written request for refund with the Tax Commission shall commence an action for a refund within the meaning of the civil statute of limitations, if such request is diligently prosecuted under the law. [TCR 05-39]

10-187 Taxes Erroneously paid. Taxes erroneously paid due to mistake of fact or law may be refunded upon application even though no written protest was made at the time of payment. The taxpayer shall file an application for refund with the Tax Commission. The taxpayer may also appeal the determination of the Tax Commission to the Tribal Court. [TCR 05-39]

10-188 Penalties.

1. Any Person who knowingly files any false report or return, or who knowingly fails to file any report or return, or who otherwise knowingly violates any provisions of this Title shall pay a civil penalty of five hundred dollars ($500) per occurrence.
2. Any person liable for taxes under this Title who shall fail to collect the taxes imposed by this Title shall be liable for the full amount of the taxes owed plus penalties and interest at the statutory rate until paid.
3. Any person liable for taxes under this Title and who willfully fails to collect or remit the taxes imposed by this Article shall be liable for the amount of the taxes plus an additional penalty of one hundred percent of the taxes due plus interest at the statutory rate until paid.
4. If payment of any tax due is not received by the Tax Commission by the last day of the month in which the tax becomes due, there shall be assessed a penalty of five percent (5%) of the amount of the tax; if the tax is not received by the last day of the month next succeeding the month in which the due date falls, there shall be assessed a total penalty of ten percent (10%) of the amount of the tax; and if the tax is not received by the last day of the second month next succeeding the month in which the due date falls on, there shall be assessed a total penalty of twenty percent (20%) of the amount of tax. No penalty so added shall be less than Twenty-Five Dollars ($25.00). [TCR 05-39, 10-56]

10-189 Records. Every person shall maintain complete and adequate records demonstrating compliance with this Article for not less than two years. [TCR 05-39]

TITLE 10
ARTICLE 2
SALES TAX

10-200 Definitions.
10-201 Tax on sales of goods.
10-202 Exceptions.
10-203 Impact of tax.
10-204 Payment of tax.
10-205 Permit System.

10-200 Definitions.

1. "Consumer" is defined to mean and include any Person, regardless of race, who consensually purchases, receives or comes into possession of goods from a Retailer located within the exterior boundaries of the Winnebago Reservation.
2. "Goods" is defined to mean and include all tangible personal property of every kind and description. "Goods" shall not include any natural or artificial gas, electricity, water, or any other utility or public service by telephone and telegraph companies or services and rental charges having any connection with the transmission of any messages.
3. "Non-Taxable Retailer" is defined to mean and include small or home-based Retailers with annual sales of less than $10,000 or with continuous operation of less than seven days in duration, including but not limited to vendors at powwows or similar cultural events, school concession stands, community-based fundraisers, and local food vendors.
4. "Person" is defined to mean and include any natural person, company, Tribally-owned corporation, partnership, corporation, commission, government agency, joint venture, association, trust, or other political or identifiable entity to which this Article can be applied.
5. "Retailer" is defined to mean and include any Person in the ordinary course of business who sells or rents any goods within the exterior boundaries of the Winnebago Reservation to another Person.
6. "Sale" or "sales" or their derivatives is defined to mean and include all sales, barters, trades, exchanges, or other transfers of ownership for value of Goods from a Retailer to any Person no matter how characterized and the rental, leasing, or other transfer of actual or constructive possession and right to use Goods for value received from a Retailer to any Person no matter how characterized. [TCR 05-39]

10-201 Tax on sales of goods. There is hereby levied upon the Sale of Goods within the exterior boundaries of the Winnebago Reservation a tax equal to five percent (5%) of the actual sales price thereof exclusive of any rebate. If a sale is consummated by trade, barter, or exchange for anything other than money, the tax shall be computed at the fair market value of the property sold. [TCR 05-39]

10-202 Exceptions. The tax imposed by Section 10-201 of this Article shall not apply to Sales by Non-Taxable Retailers or to the Sale of gasoline, tobacco, prepackaged foodstuffs, medical supplies, medicines or pharmaceutical products, tickets or admissions to events, entry fees, or Class III games of chance. The tax shall apply to the sale of prepared foods, the rental of hotel rooms, and to the proceeds of all live Class II Bingo activities including the sale of bingo supplies and upon the gaming activity itself. [TCR 05-39, 16-37]

10-203 Impact of tax. The impact of the tax levied imposed by Section 10-201 of this Article is declared to be on the Consumer and shall be added to the purchase price of the goods sold and recovered from the Consumer. [TCR 05-39]

10-204 Payment of tax. Every Retailer shall submit to the Winnebago Tax Commission twenty days following the end of each month in which the sale of goods occurred a report showing the gross amount of the sale of goods made by said Retailer and the amount of tax collected pursuant to Section 10-201 of this Article. Every Retailer shall remit the taxes collected pursuant to Section 10-201 of this Article at the same time the report is submitted. [TCR 05-39]

10-205 Permit System. The Winnebago Tax Commission is hereby authorized to establish, by rule, a sales tax permit system for all Retailers to aid in enforcement of this Article. [TCR 05-39]

TITLE 10
ARTICLE 3
GASOLINE TAX

10-300 Definitions.
10-301 Tax on sales of gasoline.
10-302 Exceptions.
10-303 Impact of tax.
10-304 Collection of tax.
10-305 Payment of tax.

10-300 Definitions.

1. "Consumer" is defined to mean and include any Person, regardless of the race of the Person, who consensually purchases, receives or comes into possession of gasoline from a Retailer located within the exterior boundaries of the Winnebago Reservation.
2. "Person" is defined to mean and include any natural person, company, Tribally-owned corporation, partnership, corporation, commission, government agency, joint venture, association, trust, or other political or identifiable entity to which this Article can be applied.
3. "Retailer" is defined to mean and include any Person in the ordinary course of business who sells any gasoline within the exterior boundaries of the Winnebago Reservation to another Person.
4. "Sale" or "Sales" or their derivatives is defined to mean and include all sales, barters, trades, exchanges, or other transfers of ownership for value of gasoline from a Retailer to any Person no matter how characterized and the rental, leasing, or other transfer of actual or constructive possession and right to use gasoline for value received from a Retailer to any Person no matter how characterized.
5. "Tribal Wholesaler" is defined as a Person who in the ordinary course of business sells gasoline to Retailers or Persons intended for the sale or use within the exterior boundaries of the Winnebago Reservation. [TCR 05-39]

10-301 Tax on sales of gasoline. There is hereby levied upon the sale of gasoline by a Tribal Wholesaler for sales within the exterior boundaries of the Winnebago Reservation a tax equal to five ($0.05) per gallon of gasoline sold exclusive of any rebate.
[TCR 05-39, 16-38]

10-302 Exceptions.

1. The tax imposed by Section 10-301 of this Article shall not apply in the applicable jurisdiction if the Winnebago Tribe has entered into an agreement or compact regarding fuel tax with the States of Nebraska or Iowa. Where applicable such agreement or compacts shall super cede Section 10-300, et al., however, the amount of tax, including any consumer rebates, collected and paid under any agreement or compact to the Tribe shall be the amount described in Section 10-301.
2. The tax imposed by Section 10-301 shall not apply to sales to Persons, customers, retailers or other wholesalers who intend to sell the product outside the exterior boundaries of the Winnebago Reservation. [TCR 05-39]

10-303 Impact of tax. The impact of the tax levied imposed by Section 10-301 of this Article is declared to be on the Tribal Wholesaler. [TCR 05-39]

10-304 Collection of tax. The Tribal Wholesaler shall collect the applicable taxes when selling to a Retailer or Persons under this Article or pursuant to any agreement or compact described in Section 10-302. [TCR 05-39]

10-305 Payment of tax. Every Tribal Wholesaler shall submit to the Winnebago Tax Commission within twenty days following the end of each month in which the sale of gasoline occurred a report promulgated by the Winnebago Tax Commission for the Winnebago Tribe of Nebraska showing the gross amount of the sale of gasoline made by said Tribal Wholesaler, the gross amount of gasoline subject to Section 10-302 of this Article and the amount of tax collected pursuant to Sections 10-301 and 10-302 of this Article. Every Tribal Wholesaler shall remit the taxes collected pursuant to Section 10-301 of this Article and any compacts or agreements described under Section 10-302 of this Article to the Winnebago Tax Commission at the same time the report is submitted. [TCR 05-39]

TITLE 10
ARTICLE 4
CONSTRUCTION TAX

10-400 Definitions.
10-401 Construction Tax.
10-402 Subcontractors.
10-403 Payment Requirements.
10-404 Material Purchase Certificates.
10-405 State and Local Taxation.

10-400 Definitions.

1. "Construction Activities" means the performance of a contract for the construction repair or improvement of property, and includes but is not limited to constructing, building, erecting, repairing, grading, excavating, drilling, exploring, testing or adding to any building, highway, street, sidewalk, bridge, culvert, sewer, irrigation or water system, or any part thereof, power plant, electrical system, air conditioning system, heating system, transmission line, pipeline, tower, excavation, grading, water well, any other improvement or structure or any part thereof when the compensation received exceeds Twenty Five Thousand Dollars ($25,000.00). Such activities shall not include constructing, repairing or adding to property which retains its identity as personal property.
2. "Person" is defined to mean and include any natural person, company, Tribally-owned corporation, partnership, corporation, commission, government agency, joint venture, association, trust, or other political or identifiable entity to which this Article can be applied.
3. "Prime contractor" means any person who is awarded a contract by a public employer for the physical performance of services within the jurisdiction of the Tribe.
4. "Subcontractor" means a person who has contracted with a prime contractor or with another subcontractor to perform a contract.
5. "Tribe" means the Winnebago Tribe of Nebraska. [TCR 10-55]

10-401 Construction Tax. Upon every person engaging or continuing in the business of contracting or performing a contract for or engaging in any non-residential Commercial for-profit construction activities for a price, commission, fee or wage on land within the jurisdiction of the Tribe, there is hereby levied, assessed and shall be collected a tax equal to three percent (3%) of the total contract price or compensation received, including all charges related to the contract such as change orders, finance charges and late charges, from such construction activities. The tax imposed in this Section is levied upon and shall be paid by the prime contractor. [TCR 10-55]

10-402 Subcontractors. When the work to be performed under any contract is sublet by the prime contractor to different persons, or in separate contracts to the same persons, each such subcontractor performing any part of said work shall be liable for the amount of the tax which accrues on account of the work performed by such person when the tax heretofore imposed has not been paid upon the whole contract by the prime contractor. [TCR 10-55]

10-403 Payment Requirements. Any prime contractor entering into any contract subject to the Construction Tax shall, before beginning the performance of such contract or contracts, either pay the Construction Tax in advance or execute and file with the Tax Commission a good and valid bond from a surety company authorized to do business in any state and approved by the Tax Commission conditioned on and ensuring that all taxes which may accrue to the Tribe will be paid when due. Such bonds shall be either (a) "job bonds" which guarantee payment when due of the aforesaid taxes resulting from performance of a specified job or activity regardless of date of completion; or (b) "blanket bonds" which guarantee payment when due of the aforesaid taxes resulting from performance of all jobs or activities

taxable under this Section begun during the period specified therein, regardless of date of completion. The payments of the taxes due or the execution and filing of a surety bond shall be a condition precedent to the commencing work on any contract taxed hereunder. Provided, that when any bond is filed in lieu of the prepayment of the tax under this Section, that the tax shall be payable monthly on the amount received during the previous month.

Any person failing either to execute any bond herein provided, or to pay the taxes in advance, before beginning the performance of any contract shall be denied the right to perform such contract until such person complies with such requirements, and the Tax Commission is hereby authorized to proceed either under Article I of the Tax Code or by injunction to prevent any activity in the performance of such contract until either a satisfactory bond is executed and filed, or all taxes are paid in advance, and a temporary injunction enjoining the execution of or commencement of work under such contract shall be granted without notice by any judge authorized by law to grant injunctions. [TCR 10-55]

10-404 Material Purchase Certificates. Any person liable for a tax under this Section may apply for and obtain a material purchase certificate from the Tax Commission which may entitle the holder to purchase materials and services that are to become a component part of the structure to be erected or repaired with no sales or use taxes due. Provided, that the contractor applying for the contractor's material purchase certificate shall furnish the Tax Commission a list of all work sublet to others, indicating the amount of work to be performed, and the names and addresses of each subcontractor. [TCR 10-55]

10-405 State and Local Taxation. The tax imposed under this Title shall be in lieu of all other state or local sales or use taxes. To ensure against state or local taxation, the Tribe may require any person liable for the tax due hereunder to purchase component materials or supplies from or through Tribal suppliers, to be delivered FOB Winnebago Indian Reservation. In all contracts where the Tribe or a Tribal entity is a party, the contract shall include a clause requiring that all materials and supplies be purchased by or through the Tribe or a Tribal entity and delivered FOB Winnebago Indian Reservation. [TCR 10-55]

TITLE 10
ARTICLE 5
BINGO TAX

[Repealed January 1, 2016]
[TCR 05-39, 16-39]

TITLE 10
ARTICLE 6
TOBACCO TAX

10-600 Definitions.
10-601 Sales of Tribal Cigarettes.
10-602 Internet Sales of Tribal Cigarettes.
10-603 Other Tribal Tobacco Products.
10-604 Compact Exceptions.
10-605 Wholesale Exceptions.
10-606 Impact of Tax.
10-607 Tax Collection.
10-608 Payment of Tax.
10-609 Effective Date.

10-600 Definitions. The following words have the meanings given below when used in this Title 10, Article 6.

1. "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains any roll of tobacco wrapped in paper or in any substance not containing tobacco.
2. "Consumer" is defined to mean and include any Person, regardless of the race of the Person, who consensually purchases, receives or comes into possession of a Tribal Cigarettes or other tribal tobacco products from a Winnebago Retailer or Winnebago Internet Retailer located within the exterior boundaries of the Winnebago Reservation.
3. "Internet Sale" or "Internet Sales" is defined to mean and include all sales, barters, trades, exchanges, or other transfers of ownership for value of Tribal Cigarettes or other tribal tobacco products from an Internet Retailer to any Person or Consumer for shipment to an address outside the exterior boundaries of the Winnebago Reservation. The locus of an Internet Sale occurs within the Winnebago Reservation at the time the transaction is processed.
4. "Internet Tribal Tax Stamp" is defined as an officially approved tax stamp of the Winnebago Tribe that is applied to all tobacco packages intended for sale by a Winnebago Internet Retailer. The Internet Tribal Tax Stamp shall be a distinct color from the Tribal Tax Stamp.
5. "Other Tribal Tobacco Product" means any product made from or containing tobacco that is not a Cigarette and is sold by a Tribal Wholesaler to a Winnebago Retailer or Winnebago Internet Retailer and does not have another government jurisdiction's tax applied to such product. The definition of Tribal Cigarettes does not include products sold by a Tribal Wholesaler to Persons, customers, retailers or other wholesalers who intend to resell the product outside the exterior boundaries of the Winnebago Reservation.
6. "Person" is defined to mean and include any natural person, company, tribally-owned corporation, partnership, corporation, commission, government agency, joint venture, association, trust, or other political or identifiable entity to which this Article can be applied.
7. "Sale" or "Sales" or their derivatives is defined to mean and include all sales, barters, trades, exchanges, or other transfers of ownership for value of Tribal Cigarettes or Other Tribal Tobacco Products from a Winnebago Retailer to any Consumer or Person no matter how characterized and the rental, leasing, or other transfer of actual or constructive possession and right to use Tribal Cigarettes or Other Tribal Tobacco Products for value received from a Winnebago Retailer to any Person no matter how characterized.
8. "Tribal Tax Stamp" is defined as an officially approved tax stamp of the Winnebago Tribe that is applied to all tobacco packages intended for sale by a Winnebago Retailer.
9. "Tribal Cigarettes" is defined as all cigarettes sold by a Tribal Wholesaler to a Winnebago Retailer or Winnebago Internet Retailer that do not have another government jurisdiction's tax stamp already affixed to the cigarette package. The definition of Tribal Cigarettes does not include products sold by a Tribal Wholesaler to Persons, customers, retailers or other wholesalers who intend to resell the product outside the exterior boundaries of the Winnebago Reservation.

10. "Tribal Wholesaler" is defined as a Person who, in the ordinary course of business, sells Tribal Cigarettes or other tobacco products to Winnebago Retailers or Persons intended for the sale or use within the exterior boundaries of the Winnebago Reservation or to Winnebago Internet Retailers intended for shipment to a Person or Consumer at an address outside the exterior boundaries of the Winnebago Reservation.
11. "Winnebago Internet Retailer" is defined to mean and include any Person in the ordinary course of business who sells any Tribal Cigarettes or Other Tribal tobacco Product within the exterior boundaries of the Winnebago Reservation to another Person by shipping to an address outside the exterior boundaries of the Winnebago Reservation.
12. "Winnebago Retailer" is defined to mean and include any Person in the ordinary course of business who sells any Tribal Cigarette or Other Tribal tobacco Product within the exterior boundaries of the Winnebago Reservation to another Person. [TCR 05-39, 16-40]

10-601 Sales of Tribal Cigarettes. There is hereby levied upon the sale of Tribal Cigarettes by a Tribal Wholesaler for Sales within the exterior boundaries of the Winnebago Reservation a tax equal to five cents ($0.05) per pack of cigarettes sold exclusive of any rebate. Such products are required to have the Tribal Tax Stamp affixed to them. [TCR 05-39, 16-40]

10-602 Internet Sales of Tribal Cigarettes. There is hereby levied upon the sale of Tribal Cigarettes by a Tribal Wholesaler for Internet Sales a tax equal to five cents ($0.05) per pack of cigarettes sold exclusive of any rebate. Such sales shall include surplus Tribal Cigarette products sold locally by a Winnebago Internet Retailer. Such products are required to have the Internet Tribal Tax Stamp affixed to them. [TCR 05-39, 16-40]

10-603 Other Tribal Tobacco Products. There is hereby levied upon the sale of Other Tribal Tobacco Products a tax equal to 10% of its wholesale price. [TCR 16-40]

10-604 Compact Exceptions. The tax imposed by Section 10-601 of this Article shall not apply in the applicable jurisdiction if the Winnebago Tribe has entered into an agreement or compact regarding tobacco tax with the States of Nebraska or Iowa. Where applicable, such agreement or compacts shall supercede Section 10-600, et al., however, the amount of tax, including any consumer rebates, collected and paid under any agreement or compact to the Tribe shall be the amount described in Section 10-601. [TCR 05-39, 16-40]

10-605 Wholesale Exceptions. The taxes imposed by this Article shall not apply to sales to Persons, customers, retailers or other wholesalers who intend to sell the product outside the exterior boundaries of the Winnebago Reservation. [TCR 05-39, 16-40]

10-606 Impact of Tax. The impact of the taxes levied by this Article is declared to be on the Tribal Wholesaler. [TCR 05-39, 16-40]

10-607 Tax Collection. The Tribal Wholesaler shall collect the applicable taxes when selling to a Winnebago Retailer or Winnebago Internet Retailer or other Persons intending to sell the tobacco products within the exterior boundaries of the Winnebago Reservation. [TCR 05-39, 16-40]

10-608 Payment of Tax. Every Tribal Wholesaler is required to purchase all applicable tax stamps from the Winnebago Tax Commission. The Tax Commission shall sell the applicable tax stamps to the Tribal Wholesaler, Winnebago Retailer, or Winnebago Internet Retailer at the applicable rate described in Sections 10-601 and 10-602 or in compliance with any compact or agreement as described in Section 10-604. [TCR 05-39, 16-40]

10-609 Effective Date. This Article as amended shall be effective January 1, 2016. [TCR 05-39, 16-40]

TITLE 10
ARTICLE 7
HOTEL LODGING TAX
(As adopted January 16, 2012)

10-700	Definitions.	10-705	Assessment and Determination of Tax.
10-701	Imposition of Tax and Fee; Exemptions.	10-706	Notices.
10-702	Records.	10-707	Licenses and Registration.
10-703	Returns.	10-708	Interest and Penalties.
10-704	Payment of Tax.		

10-700 Definitions. The following words have the meanings given below when used in this Title 10, Article 7.

1. "Hotel" is defined to mean any building or buildings, trailer or other facility in which the public may, for consideration, obtain sleeping accommodations in which five (5) or more rooms are used for the accommodation of such guests, whether such rooms are in one or several structures. The term shall include hotels, apartment hotels, motels, tourist homes, houses or courts, lodging houses, inns, rooming houses, trailer houses, trailer motels, dormitory space where bed space is rented to individuals or groups, apartments not occupied by "permanent residents," as that term is hereinafter defined, and all other facilities where rooms or sleeping facilities or space are furnished for a consideration. As defined herein, "hotel" shall not include hospitals, sanitariums or nursing homes.
2. "Occupancy" is defined to mean the use or possession or the right to the use or possession of any room or rooms in a hotel.
3. "Occupant" is defined to mean a person who, for a consideration, uses, possesses or has the right to the use or possession of any room or rooms in a hotel under any lease, concession, permit, right of access, license to use, or other agreement, or otherwise.
4. "Operator" is defined to mean any person operating a hotel, including, but not limited to, the owner, proprietor, lessee, sub-lessee, and mortgagee in possession, licensee, or any other person otherwise operating such hotel.
5. "Permanent resident" is defined to mean any occupant who has or shall have the right of occupancy of any room or rooms in the same hotel for at least thirty (30) consecutive days during the current calendar year or preceding year.
6. "Person" is defined to mean and include any natural individual, company, partnership, firm, joint venture, association, corporation, estate, trust, political entity or other identifiable entity to which this Act can be applied.
7. "Rent" is defined to mean the consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature, and also any amount for which credit is allowed by the operator to the occupant, without any deduction therefrom whatsoever.
8. "Return" is defined to mean any return filed or required to be filed as herein provided.
9. "Room" is defined to mean any room or rooms of any kind in any part or portion of a hotel which is available for, let for the use of, or possessed for the purpose of lodging or sleeping. [TCR 12-38, 16-41]

10-701 Imposition of Tax and Fee; Exemptions.

1. There is hereby levied an excise tax of seven percent (7%) upon the gross proceeds or gross receipts derived from the rent from every occupancy of a room or rooms in a hotel within the Winnebago Tribe's jurisdiction, including hotels owned by the Winnebago Tribe, except that the tax shall not be imposed where the rent is less than Ten Dollars ($10.00) per day.
2. No tax shall be imposed hereunder upon a permanent resident.
3. No tax shall be imposed hereunder upon the United States insofar as it is immune from taxation, nor on any State, County, or municipality.
4. The tax to be collected shall be stated and charged separately from the rent and shall be shown separately on any record thereof at the time when the occupancy is arranged or contracted and charged for, and upon every evidence of occupancy or any bill, statement or charge made for such occupancy issued or delivered by the operator. The tax shall be paid by the occupant to the operator as trustee for and on account of the Tax Commission, and the operator shall be liable for the collection thereof and for the payment of the tax. The operator and any officer of any corporate operator shall be personally liable for the tax collected or required to be collected under this Title, and the operator shall have the same right in respect to collecting the tax from the occupant or in respect to nonpayment of the tax by the occupant as if the tax were a part of the rent for the occupancy payable at the same time such tax shall become due and owing, including all rights of eviction, dispossession, repossession and enforcement of any innkeeper's lien that the Tax Commission may have in the event of nonpayment of rent by the occupant.
5. Such taxes, penalty and interest due hereunder shall at all times constitute a prior, superior and paramount claim as against the claim of unsecured creditors and may be collected by suit as any other debt.
6. Where the occupant has failed to pay and the operator has failed to collect a tax as imposed by this Article, then, in addition to all other rights, obligations and remedies provided, such tax shall be payable by the occupant directly to the Tax Commission, and it shall be the duty of the occupant to file a return thereof with the Tax Commission and to pay the tax imposed thereon to the Tax Commission within fifteen (15) days after such tax was due.
7. The Tax Commission may, whenever it deems it necessary for the proper enforcement of this Article, provide by regulation that the occupant shall file returns and pay directly to the Tax Commission the tax herein imposed at such times as returns are required to be filed and payment over made by the operator.
8. The tax imposed by this Section shall be paid upon any occupancy on or after the passage of this Article by the Tribal Council, although such occupancy is had pursuant to a contract, lease or other arrangement made prior to such passage. Where rent is paid, charged, billed or falls due on either a weekly or other term basis, the rent so paid, charged, billed or falling due shall be subject to the tax herein imposed to the extent that it covers any portion of the period after passage of this Article, and such payment, bill, charge or rent due shall be apportioned on the basis of the ratio of the number of days falling within such portion to the total number of days covered thereby. Where any tax has been paid hereunder upon any rent which has been ascertained to be worthless (e.g. a dishonored check), the Tax Commission may, by regulation, provide for credit or refund of the amount of such tax upon application as provided herein.
9. For the purpose of the proper administration of this Article, and to prevent evasion of the tax hereby imposed, it shall be presumed that all rentals are subject to the tax until facts to the contrary are established; and the burden of providing that a rent for occupancy is not taxable hereunder shall be upon the operator or the occupant.
10. No operator shall advertise or hold out to the public in any manner, directly or indirectly, that the tax imposed by this Article is not considered as an element in the rent charged to the occupant.
11. In addition to the excise tax imposed by this Section, there is imposed a $1.50 per night Fire and Rescue fee for each room rented, except that the fee shall not be imposed when the room rental is

provided by the Operator on a complimentary basis. This Fire and Rescue fee shall be allocated to the Winnebago Volunteer Fire Department. All procedures applicable to the payment of a tax under this Article shall be applicable to the Fire and Rescue fee. [TCR 12-38, 16-41]

10-702 Records. Every operator shall maintain for not less than three (3) years complete and adequate records including records of every occupancy and of all rent paid, charged or due thereon and of the tax payable, collected and paid. [TCR 12-38]

10-703. Returns.

1. Every operator, on or before the fifteenth (15th) day of each quarter, shall file with the Tax Commission a return of occupancy and of rents and of the taxes payable thereon for the preceding quarter. The date of filing shall be the date of delivery to the Tax Commission.
2. The Tax Commission may permit or require returns to be made by shorter or longer periods and upon such dates as the Tax Commission may specify. The form of return shall be prescribed by the Tax Commission and shall contain such information as it may deem necessary for the proper administration of this Article. The Tax Commission may require amended returns to be filed within twenty (20) days after notice, containing the information specified in the notice.
3. If a return required by this Article is not filed or if a return when filed is incorrect or insufficient on its face, the Tax Commission shall take the necessary steps to enforce the filing of a return or an amended return. [TCR 12-38, 16-41]

10-704 Payment of Tax.

1. At the time of filing a return of occupancy and of rents, each operator shall pay to the Tax Commission the taxes imposed upon the rents included in such return, as well as all other moneys collected by the operator acting or purporting to act under the provisions of this Article.
2. All taxes for the period for which a return is required shall be due and payable on or before the date fixed for the filing of the return for such period, without regard to whether a return is filed or whether the return correctly filed shows the amount of rents and the taxes due.
3. If any operator has twice failed to pay taxes on or before the date fixed for payment of such taxes or if any operator refuses to pay the taxes or if the Tax Commission has reasonable grounds for belief that any operator is about to cease business or leave the state or remove or dissipate assets, or if, for any similar reason the Tax Commission deems it necessary to protect revenues due hereunder, the Tax Commission may require an operator to file with the Tax Commission either a performance and payment bond, as detailed herein, or in lieu of this bond, an escrow account or an irrevocable letter of credit as detailed herein. Should the operator not submit either a performance and payment bond, an escrow account or an irrevocable letter of credit within fifteen (15) days of notice to do so, the Tax Commission may conduct a hearing to suspend the operator's license provided for in § 10-707. The performance bond, irrevocable letter of credit or escrow account shall be provided as follows:
   A. A performance and payment bond in a form acceptable to the Tax Commission naming the operator as obligee thereof, executed by a surety acceptable to the Tax Commission and authorized to do business in the state of Iowa or Nebraska, in a sum equal to the average daily room rental rate within the Winnebago Tribe jurisdiction, to be ascertained by the Tax Commission, times the number of rooms available for rent within the hotel multiplied by a factor of thirty (30), times five percent (5%); or
   B. An irrevocable letter of credit in a form acceptable to the Tax Commission, executed by the operator and a federally insured financial institution acceptable to the Tax Commission, providing for a sum equal to the average daily room rental rate within the Winnebago Tribe jurisdiction, to be ascertained by the Tax Commission, times the

number of rooms available for rent within the hotel multiplied by a factor of thirty (30), times five percent (5%); or

C. An escrow account held by the Tax Commission in a sum equal to the average daily room rental rate within the Winnebago Tribe jurisdiction, to be ascertained by the Tax Commission, times the number of rooms available for rent within the hotel multiplied by a factor of thirty (30), times five percent (5%). [TCR 12-38, 16-41]

10-705 Assessment and Determination of Tax.

1. If a return required by this Article is not filed, or if a return when filed is incorrect or insufficient, the amount of tax due shall be assessed by the Tax Commission from such information as may be obtainable and, if necessary, the tax may be estimated on the basis of external indices, such as number of rooms, location, scale of rents, comparable rents, types of accommodations and services, number of employees, or other factors.
2. Written notice of such assessments shall be given to the person liable for the collection and payment of the tax. Such assessment shall finally and irrevocably fix and determine the tax, unless the person against whom it is assessed, shall apply in writing to the Tax Commission for a hearing in conformance with Article I of the Winnebago Tribal Tax Code, or unless the Tax Commission, at its discretion, shall reassess the same. [TCR 12-38, 16-41]

10-706 Notices. Notices provided for under this Article shall be deemed to have been given when such notices have been delivered personally to the operator or deposited in the United States mail to the last known address of the operator. [TCR 12-38, 16-41]

10-707 Licenses and Registration.

1. Every new operator shall file with the Tax Commission, within three (3) days of engaging in the hotel business, an application for license and registration. Existing operators shall file an application within 3 days of being notified by the Tax Commission of the passage of this Article.
2. The Tax Commission shall, within five (5) days after such registration, issue to each operator a license empowering such operator to collect the tax from the occupant.
3. The license shall be permanently displayed by the operator in such manner that it may be seen by and may come to the notice of all occupants and persons seeking occupancy.
4. Such license shall be non-assignable and nontransferable and shall be surrendered immediately to the Tax Commission upon the cessation of business at the hotel named, or upon its sale or transfer. [TCR 12-38, 16-41]

10-708 Interest and Penalties.

1. Every operator who shall fail to collect the taxes imposed by this Article shall be liable for the full amount of the tax owed plus interest at the statutory rate until paid.
2. Willful failure to collect or pay over the taxes imposed by this Article shall subject the operator to the provisions of Article I of the Winnebago Tribal Tax Code. [TCR 12-38, 16-41]

TITLE 11
BUSINESS CORPORATION CODE

SUMMARY OF CONTENTS

SECTION	ARTICLE-PAGE
1. TABLE OF REVISIONS	ii
2. TABLE OF CONTENTS	iii
3. ARTICLE 1.00: CITATION; DEFINITIONS	1.00-1
4. ARTICLE 1.02: APPLICATION	1.02-1
5. ARTICLE 1.10: INCORPORATION; ARTICLES	1.10-1
6. ARTICLE 1.16: POWERS	1.16-1
7. ARTICLE 1.17: ORGANIZATION; BYLAWS	1.17-1
8. ARTICLE 2: BOARD	2-1
9. ARTICLE 3: OFFICERS	3-1
10. ARTICLE 4: SHARES; SHAREHOLDERS	4-1
11. ARTICLE 5: LOANS; OBLIGATIONS; DISTRIBUTIONS	5-1
12. ARTICLE 6: MERGER, EXCHANGE, TRANSFER	6-1
13. ARTICLE 7: DISSOLUTION	7-1
14. ARTICLE 8.01: EXTENSION	8.01-1
15. ARTICLE 8.21: CORPORATION REGISTRATION	8.21-1
16. ARTICLE 9: ACTIONS AGAINST CORPORATIONS	10-1
17. ARTICLE 10: CORPORATIONS WHOLLY OWNED BY THE TRIBE	11-1
18. ARTICLE 11: EFFECTIVE DATE AND AUTHORITY	12-1
19. ARTICLE 12: CONVERSION	13-1
20. ARTICLE 13: DOMESTICATION	14-1

TITLE 11
TABLE OF REVISIONS

The following table is included in this title as a guide for determining whether each article properly reflects the current version. This table will be updated with the revision of each article.

Through usage and supplementation, pages in bound titles can be inserted and removed when sections are revised on an article-by-article basis. This table should be placed before the Table of Contents in the title.

The "Article" column lists each article, and the "Section" column lists any corresponding sections that have been revised, in sequence. The "Revised Date" column reflects the effective date of the revision (e.g., "6/20/15"). If an article is not listed in the table, it has not been revised since the December 2015 Winnebago Tribal Code update and distribution.

Article	**Section**	**Revised Date**

TITLE 11
BUSINESS CORPORATION CODE

ARTICLE 1.00
CITATION; DEFINITIONS

11-001 Citation.
11-011 Definitions.

ARTICLE 1.02
APPLICATION

11-021 Repeal of previous business corporation code.
11-041 Reservation of right.
11-061 Corporations wholly owned by the Tribe.
11-081 Sovereign immunity of the Tribe not waived.

ARTICLE 1.10
INCORPORATION; ARTICLES

11-101 Purposes.
11-105 Incorporators.
11-111 Articles.
11-115 Corporate name.
11-117 Reserved name.
11-121 Registered office; registered agent.
11-123 Change of registered office or registered agent; change of name of registered agent.
11-131 Amendment of Articles.
11-133 Procedure for amendment before issuance of shares.
11-135 Procedure for amendment after issuance of shares.
11-137 Class or series voting on amendments.
11-139 Articles of amendment.
11-141 Effect of amendment.
11-151 Filing articles.
11-153 Effective date of articles.
11-155 Presumption; Certificate of Incorporation.

ARTICLE 1.16
POWERS

11-161 Powers.
11-163 Corporate seal.
11-165 Effect of lack of power; ultra vires.

ARTICLE 1.17
ORGANIZATION; BYLAWS

11-171 Organization.
11-181 Bylaws.

ARTICLE 2
BOARD

11-201 Board.
11-203 Number.
11-205 Qualifications; election.
11-207 Terms.
11-209 Acts not void or voidable.
11-211 Compensation.
11-213 Classification of directors.
11-215 Cumulative voting for directors.
11-221 Resignation.
11-223 Removal of directors.
11-225 Vacancies.
11-231 Board meetings.
11-233 Absent directors.
11-235 Quorum.
11-237 Act of the board.
11-239 Action without meeting.
11-241 Committees.
11-251 Standard of conduct.
11-255 Director conflicts of interest.

ARTICLE 3
OFFICERS

11-301 Officers required.
11-305 Duties of required officers.
11-311 Other officers.
11-315 Multiple offices.
11-321 Officers deemed elected.
11-331 Contract rights.
11-341 Resignation; removal; vacancies.
11-351 Delegation.
11-361 Standard of conduct.

ARTICLE 4
SHARES; SHAREHOLDERS

11-401 Authorized shares.
11-402 Share dividends, divisions, and combinations.
11-403 Subscriptions for shares.
11-405 Consideration for shares; value and payment; liability.
11-413 Preemptive rights.
11-417 Share certificates; issuance and contents; uncertificated shares.
11-419 Lost share certificates; replacement.
11-423 Fractional shares.
11-425 Liability of subscribers and shareholders with respect to shares.
11-429 Restriction on transfer or registration of securities.
11-431 Regular meetings of shareholders.
11-433 Special meetings of shareholders.
11-435 Notice.
11-436 Electronic communications.
11-437 Act of the shareholders.
11-441 Action without a meeting.
11-443 Quorum.
11-445 Voting rights.
11-447 Voting of shares by organizations and legal representatives.
11-449 Proxies.
11-453 Voting trusts.
11-455 Shareholder voting agreements.
11-457 Shareholder control agreements.
11-461 Books and records; inspection.
11-463 Financial statements.
11-467 Equitable remedies.
11-471 Rights of dissenting shareholders.
11-473 Procedures for asserting dissenter’s rights.

ARTICLE 5
LOANS; OBLIGATIONS; DISTRIBUTIONS

11-501 Loans; guarantees; suretyship.
11-505 Advances.
11-521 Indemnification.
11-551 Distributions.
11-553 Powers to acquire shares.
11-557 Liability of shareholders for illegal distributions.
11-559 Liability of directors for illegal distributions.

ARTICLE 6
MERGER, EXCHANGE, TRANSFER
(As revised March 30, 2015)

11-600 Definitions
11-601 Merger, exchange, transfer.
11-611 Plan of merger or exchange.
11-613 Plan approval.
11-615 Articles of merger or exchange; certificate.
11-621 Merger of subsidiary.
11-631 Abandonment.
11-641 Effective date of merger or exchange; effect.
11-651 Merger or exchange with foreign corporation.
11-661 Transfer of assets; when permitted.

ARTICLE 7
DISSOLUTION

11-701 Methods of dissolution.
11-711 Voluntary dissolution by incorporators.
11-721 Voluntary dissolution by shareholders.
11-723 Filing notice of intent to dissolve; effect.
11-727 Dissolution procedure for corporations that give notice to creditors and claimants.
11-729 Dissolution procedure for corporations that do not give notice.
11-731 Revocation of dissolution proceedings.
11-734 Effective date of dissolution; certificate.
11-741 Supervised voluntary dissolution.
11-751 Judicial intervention; equitable remedies or dissolution.
11-753 Procedure in involuntary or supervised voluntary dissolution.
11-755 Qualifications of receivers; powers.
11-757 Action by Tribal Council.
11-759 Filing claims in proceedings to dissolve.
11-761 Discontinuance of dissolution proceedings.
11-763 Decree of dissolution.
11-765 Filing decree.
11-771 Deposit with Tribal Treasurer of amount due certain shareholders.
11-781 Claims barred; exceptions.
11-783 Right to sue or defend after dissolution.
11-791 Omitted assets.

ARTICLE 8.01
EXTENSION

11-801 Extension after duration expired.
11-805 Effect of extension.

ARTICLE 8.21
CORPORATE REGISTRATION

11-821 Winnebago Tribal corporate registration.

ARTICLE 9
ACTIONS AGAINST CORPORATIONS

11-901 Service of process on corporation.
11-917 Court action; remedies and penalties.

ARTICLE 10
CORPORATIONS WHOLLY OWNED BY THE TRIBE

11-1001 Scope.
11-1002 Application.
11-1003 Special powers, privileges and immunities of corporations wholly owned by the Tribe.
11-1010 Board.
11-1021 Shares in corporations wholly owned by the Tribe; shareholders; voting.
11-1022 Liability of Tribe as shareholder.
11-1023 Shareholder meetings.
11-1030 Assets, distribution of income.
11-1091 Voluntary dissolution by incorporators.

ARTICLE 11
EFFECTIVE DATE AND AUTHORITY

11-1101 Severability; effect of invalidity of part of this Code.
11-1111 Effective date.
11-1113 Authority.
11-1117 No impairment of contracts.

ARTICLE 12
CONVERSION
(As adopted March 30, 2015)

11-1201 Definitions.
11-1202 Conversion.
11-1203 Conversion of Domestic Corporation into Another Business Entity.
11-1204 Plan of Conversion for Domestic Corporation into Another Business Entity.
11-1205 Filing of Certificate of Conversion for Domestic Corporation Converting into Another Business Entity.
11-1206 Effect of Conversion of Domestic Corporation into Another Business Entity.
11-1207 Conversion of Business Entity into a Domestic Corporation.
11-1208 Plan of Conversion for Business Entity into a Domestic Corporation.
11-1209 Effect of Conversion of Business Entity into Domestic Corporation.
11-1210 Articles of Entity Conversion.
11-1211 Surrender of Charter Upon Conversion.
11-1212 Articles Not Exclusive.

ARTICLE 13
DOMESTICATION
(As adopted March 30, 2015)

11-1301 Domestication.
11-1301 Action on a Plan of Domestication.
11-1303 Articles of Domestication.
11-1304 Surrender of Charter Upon Domestication.
11-1305 Effect of Domestication.
11-1306 Abandonment of Domestication.
11-1307 Article not exclusive.

TITLE 11
ARTICLE 1.00
BUSINESS CORPORATION CODE

CITATION

11-001 Citation. 11-011 Definitions.

11-001 Citation. This Code shall be known as the Winnebago Tribe of Nebraska Business Corporation Code. [TCR 94-124]

11-011 Definitions. For the purpose of this Code, unless the language or context clearly indicates that a different meaning is intended, the words, terms and phrases defined in this Section have the meanings given to them.

1. "Acquiring corporations" means the Tribal or foreign corporation that acquired the shares of a corporation in an exchange.
2. "Address" means mailing address, including a zip code. In the case of a registered office or principal executive office, the term means the mailing address and the actual office location which shall not be a post office box.
3. "Articles" means, in the case of a corporation incorporated under or governed by this Code, incorporation, articles of amendment, a resolution of election to become governed by this Code, a statement of change of registered office, registered agent, or name of registered agent, a statement establishing or fixing the rights and preferences of a class or series of shares, a statement of cancellation of authorized shares, articles of merger, articles of abandonment, and articles of dissolution. In the case of a foreign corporation, the term includes all documents served using a similar function required to be filed with the Tribal Secretary or other officer of the Tribe.
4. "Board" means the board of directors of a corporation.
5. "Class," when used with reference to shares, means a category of shares that differs in designation or one or more rights or preferences from another category of shares of the corporation.
6. "Closely-held corporation" means a corporation which does not have more than 35 shareholders.
7. "Constituent corporation" means a Tribal or foreign corporation that is a party to a merger or exchange.
8. "Corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under or governed by this Code.
9. "Court" means the Winnebago Tribal Court.
10. "Director" means a member of the board.
11. "Distribution" means a direct or indirect transfer of money or other property, other than its own shares, with or without consideration or an incurrence or issuance of indebtedness, by a corporation to any of its shareholders in respect of its shares. A distribution may be in the form of a dividend or a distribution in liquidation, or as consideration for the purchase, redemption, or other acquisition of its shares, or otherwise.
12. "Filed with the Tribal Secretary" means that an original of a document meeting the applicable requirements of this Code, signed and accompanied by a filing fee of $25.00, has been delivered to the Tribal Secretary of the Tribe on the reservation. The Tribal Secretary shall endorse on the original the word "Filed" and the month, day, year, and time of filing, record the document in the office of the Tribal Secretary, and return the document to the person who delivered it for filing.

13. "Foreign corporations" means a corporation organized for profit that is incorporated under laws other than the laws of the Tribe.
14. "Good faith" means honesty in fact in the conduct of the act or transaction concerned.
15. "Intentionally" means that the person referred to either has a purpose to do or fail to do the act or cause the result specified or believes that the act or failure to act, if successful, will cause that result. A person "intentionally" violates a law if the person intentionally does the act or causes the result prohibited by the law, or if the person intentionally fails to do the act or cause the result required by the law, even though the person may not know of the existence or constitutionality of the law or the scope or meaning of the terms used in the law.
16. A person "knows" or has "knowledge" of a fact when the person has actual knowledge of it. A person does not "know" or "have knowledge" of a fact merely because the person has reason to know of the fact.
17. "Legal representative" means a person empowered to act for another person, including, but not limited to, an agent, officer, partner, or associate of, an organization; a trustee of a trust; a personal representative; an executor of a will; an administrator of an estate; a trustee in bankruptcy; and a receiver, guardian, custodian, or conservator of the person or estate of a person.
18. "Notice" is given by a shareholder of a corporation to the corporation or an officer of the corporation when in writing and mailed or delivered to the corporation or the officer at the registered office or principal executive office of the corporation. In all other cases, "notice" is given to a person when mailed to the person at an address designated by the person or at the last known address of the person, or when communicated to the person orally, or when handed to the person, or when left at the office of the person with a clerk or other person in charge of the office, or if there is no one in charge, when left in a conspicuous place in the office, or if the office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion then residing therein. Notice by mail is given when deposited in the United States mail with sufficient postage affixed. Notice is deemed received when it is given.
19. "Officer" means a person elected, appointed, or otherwise designated as an officer by the board, and any other person deemed elected as an officer pursuant to Section 11-321.
20. "Organization" means a Tribal or foreign corporation, foreign limited liability company, limited partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity.
21. "Outstanding shares" means all shares duly issued and not reacquired by a corporation.
22. "Parent" of a specified corporation means a corporation that directly, or indirectly through related corporations, owns more than 50 percent of the voting power of the shares entitled to vote for directors of the specified corporation.
23. "Person" includes a natural person and an organization.
24. "Principal executive office" means an office where the elected or appointed chief executive officer of a corporation has an office. If the corporation has no elected or appointed chief executive officer, "principal executive office" means the registered office of the corporation.
25. "Registered office" means the place designated in the articles of a corporation as the registered office of the corporation.
26. "Related corporation" of a specified corporation means a parent or subsidiary of the specified corporation or another subsidiary of a parent of the specified corporation.
27. "Reservation" means the reservation of the Tribe as is now or hereafter may be recognized by the Secretary of the Interior of the United States of America.
28. "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit sharing agreement; collateral trust certificate; pre-organization certificate or subscription; transferable shares; investment contract; investment

metal contract or investment gem contract; voting trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas or mining right, title or lease or in payments out of production under the right, title or lease; or in general, any interest or instrument commonly known as security, or any certificate of interest or participation in, temporary or interim certificate for, receipt for guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or for some other specified period.

29. "Series" means a category of shares, within a class of shares authorized or issued by a corporation by or pursuant to its articles, that have some of the same rights and preferences as other shares within the same class, but that differ in designation or one or more rights and preferences from another category of shares within that class.
30. "Share" means one of the units, however designated, into which the shareholder's proprietary interests in a corporation are divided.
31. "Shareholder" means a person registered on the books or records of a corporation or its transfer agent or registrar as the owner of whole or fractional shares of the corporation.
32. "Signed" means that the signature of a person has been written on a document and, with respect to a document required by this Code to be filed with the Tribal Secretary, means that the document has been signed by a person authorized to do so by this Code, the articles or bylaws, or a resolution approved by the affirmative vote of the required proportion or number of the directors or the holders of the required proportion or number of the voting power of the shares present and entitled to vote. A signature on a document not required by this Code to be filed with the Tribal Secretary may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, or in any other manner reproduced on the document.
33. "Subsidiary" of a specified corporation means a corporation having more than 50 percent of the voting power of its shares entitled to vote for directors owned directly or indirectly through related corporations, by the specified corporation.
34. "Surviving corporation" means the Tribal or foreign corporation resulting from a merger.
35. "Transaction statement" means the "initial transaction statement" of uncertificated securities sent to: (a) the new registered owner, and, if applicable, to the registered pledgee; (b) the registered owner, consistent with procedures of Article 8 of the Uniform Commercial Code (Chapter 91) of the Revised Statutes of Nebraska.
36. "Tribal corporation" means a corporation that is incorporated under this Code.
37. "Tribal Council" means the Tribal Council of the Winnebago Tribe of Nebraska.
38. "Tribal Secretary" means the Tribal Secretary for the Winnebago Tribal Council.
39. "Tribal Treasurer" means the Tribal Treasurer for the Winnebago Tribal Council.
40. "Tribe" means the Winnebago Tribe of Nebraska.
41. "Trust land" means land held in trust by the United States government for the benefit of the Tribe.
42. "Vote" includes authorization by written action.
43. "Written action" means a written document signed by all of the persons required to take the action described. The term also means the counterparts of a written document signed by any of the persons taking the action described. Each counterpart constitutes the action of the persons signing it, and all the counterparts, taken together, constitute one written action by all of the persons signing them. [TCR 94-124, 95-10]

TITLE 11
ARTICLE 1.02
APPLICATION

11-021 Repeal of previous business corporation code.
11-041 Reservation of right.
11-061 Corporations wholly owned by the Tribe.
11-081 Sovereign immunity of the Tribe not waived.

11-021 Repeal of previous business corporation code. The Winnebago Tribe of Nebraska Business Corporation Act of 1986 (the "Prior Corporation Code") is hereby repealed effective September 15, 1994. No corporations were organized under the Prior Corporation Code. Effective with the effective date of this Code, a corporation incorporated for a purpose or purposes for which a corporation may be incorporated under this Code shall be incorporated only under this Code. [TCR 94-124]

11-041 Reservation of right. The Tribe reserves the right to amend or repeal the provisions of this Code. A corporation incorporated under or governed by this Code is subject to this reserved right. [TCR 94-124]

11-061 Corporations wholly owned by the Tribe. The provisions of Sections 11-1001 through 11-1091 shall apply to all corporations incorporated under this Code and wholly owned, directly or indirectly, by the Tribe and shall override any other provisions in this Code to the contrary. In the case of Tribal corporations wholly owned, directly or indirectly, by the Tribe, all provisions of this Code are subject to the provisions of Sections 11-1001 through 11-1091. [TCR 94-124]

11-081 Sovereign immunity of the Tribe not waived. By the adoption of this Code, the Tribe does not waive its sovereign immunity or consent to suit in any court, federal, tribal or state, and neither the adoption of this Code, nor the incorporation of any corporation hereunder, shall be construed to be a waiver of the sovereign immunity of the Tribe or a consent to suit against the Tribe in any such court. [TCR 94-124]

TITLE 11
ARTICLE 1.10
INCORPORATION; ARTICLES

11-101 Purposes.
11-105 Incorporators.
11-111 Articles.
11-115 Corporate name.
11-117 Reserved name.
11-121 Registered office; registered agent.
11-123 Change of registered office or registered agent; change of name of registered agent.
11-131 Amendment of Articles.
11-133 Procedure for amendment before issuance of shares.
11-135 Procedure for amendment after issuance of shares.
11-137 Class or series voting on amendments.
11-139 Articles of amendment.
11-141 Effect of amendment.
11-151 Filing articles.
11-153 Effective date of articles.
11-155 Presumption; Certificate of Incorporation.

11-101 Purposes. A corporation may be incorporated under this Code for any business purpose or purposes, unless some other Code of the Tribe requires incorporation for any of those purposes under a different law. Unless otherwise provided in its articles, a corporation has general business purposes. [TCR 94-124]

11-105 Incorporators. One or more enrolled members of the Tribe of full age may act as incorporators of a corporation by filing with the Tribal Secretary articles of incorporation for the corporation. [TCR 94-124]

11-111 Articles.

Subdivision 1. Required provisions. The articles of incorporation shall contain:

1. The name of the corporation;
2. The address of the registered office of the corporation and the name of its registered agent, if any, at that address;
3. The aggregate number of shares that the corporation has authority to issue; and
4. The name and address of each incorporator.

Subdivision 2. Provisions that may be modified only in articles. The following provisions govern a corporation unless modified in the articles:

1. A corporation has general business purposes;
2. A corporation has perpetual existence and certain powers;
3. The power to adopt, amend, or repeal the bylaws is vested in the board;
4. A corporation must allow cumulative voting for directors;
5. The affirmative vote of a majority of directors present is required for an action of the board;
6. A written action by the board taken without a meeting must be signed by all directors;
7. The board may authorize the issuance of securities and rights to purchase securities;
8. All shares are common shares entitled to vote and are of one class and one series;
9. All shares have equal rights and preferences in all matters not otherwise provided for by the board;
10. The par value of shares is fixed at one cent per share for certain purposes and may be fixed by the board for certain other purposes;

11. The board or the shareholders may issue shares for any consideration or for no consideration to effectuate share dividends or splits, divisions, or combinations, and determine the value of non-monetary consideration;
12. Shares of a class or series must not be issued to holders of shares of another class or series to effectuate share dividends or splits, divisions, or combinations, unless authorized by a majority of the voting power of the shares of the same class or series as the shares to be issued;
13. A corporation may issue rights to purchase securities whose terms, provisions, and conditions are fixed by the board;
14. A shareholder has no preemptive rights, unless otherwise provided by the board;
15. The affirmative vote of the holders of a majority of the voting power of the shares present and entitled to vote at a duly held meeting is required for an action of the shareholders, except where this Code requires the affirmative vote of a majority of the voting power of all shares entitled to vote;
16. Shares of a corporation acquired by the corporation may be reissued;
17. Each share has one vote unless otherwise provided in the terms of the share;
18. A corporation may issue shares for a consideration less than the par value, if any, of the shares; and
19. The board may effect share dividends, divisions, and combinations under certain circumstances without shareholder approval (Section 11-402).

Subdivision 3. Provisions that may be modified either in articles or in bylaws. The following provisions govern a corporation unless modified either in the articles or in the bylaws:

1. Directors serve for an indefinite term that expires at the next regular meeting of shareholders (Section 11-207);
2. The compensation of directors is fixed by the board (Section 11-211);
3. A certain method must be used for removal of directors (Section 11-223);
4. A certain method must be used for filling board vacancies (Section 11-225);
5. If the board fails to select a place for a board meeting, it must be held at the principal executive office (Section 11-231, subdivision 1);
6. The notice of a board meeting need not state the purpose of the meeting (Section 11-231, subdivision 3);
7. A majority of the board is a quorum for a board meeting (Section 11-235);
8. A committee shall consist of one or more persons, who need not be directors, appointed by affirmative vote of a majority of the directors present (Section 11-241, subdivision 2);
9. The board may establish a special litigation committee (Section 11-241);
10. The chief executive officer and chief financial officer have specified duties, until the board determines otherwise (Section 11-305);
11. Officers may delegate some or all of their duties and powers, if not prohibited by the board from doing so (Section 11-351);
12. The board may establish uncertificated shares (Section 11-417, subdivision 7);
13. Regular meetings of shareholders need not be held, unless demanded by shareholders holding at least ten percent of the voting power under certain conditions (Section 11-431);
14. In all instances where a specific minimum notice period has not otherwise been fixed by law, not less than ten days notice is required for a meeting of shareholders (Section 11-435, subdivision 2);
15. The number of shares required for a quorum at a shareholders meeting is a majority of the voting power of the shares entitled to vote at the meeting (Section 11-443);

16. The board may fix a date up to 60 days before the date of a shareholders meeting as the date for the determination of the holders of shares entitled to notice of and entitled to vote at the meeting (Section 11-445, subdivision 1);
17. Indemnification of certain persons is required (Section 11-521); and
18. The board may authorize, and the corporation may make, distributions not prohibited, limited, or restricted by an agreement (Section 11-551, subdivision 1).

Subdivision 4. Optional provisions specific subjects. The following provisions relating to the management of the business or the regulation of the affairs of a corporation may be included either in the articles or, except for naming members of the first board, fixing a greater than majority director or shareholder vote, or giving or prescribing the manner of giving voting rights to persons other than shareholders otherwise than pursuant to the articles, or eliminating or limiting a directories personal liability, in the bylaws:

1. The members of the first board may be named in the articles (Section 11-201, subdivision 1);
2. A manner for increasing or decreasing the number of directors may be provided (Section 11-203);
3. Additional qualifications for directors may be imposed (Section 11-205);
4. Directors may be classified (Section 11-213);
5. The day or date, time, and place of board meetings may be fixed (Section 11-231, subdivision 1);
6. Absent directors may be permitted to give written consent or opposition to a proposal (Section 11-233);
7. A larger than majority vote may be required for board action (Section 11-237);
8. Authority to sign and deliver certain documents may be delegated to an officer or agent of the corporation other than the chief executive officer (Section 11-305, subdivision 2);
9. Additional officers may be designated (Section 11-311);
10. Additional powers, rights, duties, and responsibilities may be given to officers (Section 11-315);
11. A method for filling vacant offices may be specified (Section 11-341, subdivision 3);
12. A certain officer or agent may be authorized to sign share certificates (Section 11-417, subdivision 2);
13. The transfer or registration of transfer of securities may be restricted (Section 11-429);
14. The day or date, time, and place of regular shareholder meetings may be fixed (Section 11-431, subdivision 3);
15. Certain persons may be authorized to call special meetings of shareholders (Section 11-433, subdivision 1);
16. Notices of shareholder meetings may be required to contain certain information (Section 11-435, subdivision 3);
17. A larger than majority vote may be required for shareholder action (Section 11-437);
18. Voting rights may be granted in or pursuant to the articles to persons who are not shareholders (Section 11-445, subdivision 4);
19. Corporate actions giving rise to dissenter rights may be designated (Section 11-471, subdivision 1, clause (e));
20. The rights and priorities of persons to receive distributions may be established (Section 11-551); and
21. A director's personal liability to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director may be eliminated or limited in the articles (Section 11-251, subdivision 4).

Subdivision 5. Optional provisions: generally. The articles may contain other provisions not inconsistent with law relating to the management of the business or the regulation of the affairs of the corporation.

Subdivision 6. Powers need not be stated. It is not necessary to set forth in the articles any of the corporate powers granted by this Code. [TCR 94-124, 95-10]

11-115 Corporate name.

Subdivision 1. Requirements; prohibitions. The corporate name:

1. Shall be in the Winnebago or English language or in any other language expressed in English letters or characters;
2. Shall contain the word "corporation," "incorporated," or "limited," or shall contain an abbreviation of one or more of these words, or the word "company" or the abbreviation "Co." if that word or abbreviation is not immediately preceded by the word "and" or the character "&";
3. Shall not contain a word or phrase that indicates or implies that it is incorporated for a purpose other than a legal business purpose;
4. Shall be distinguishable upon the records in the office of the Tribal Secretary from the name of a Tribal corporation or other legal entity, whether tribal or foreign, authorized or registered to do business on the Reservation or, whether or not authorized or registered to do business on the Reservation is well known on the Reservation, whether profit or nonprofit, or a name the right to which is, at the time of incorporation, reserved or provided for in Section 11-117, unless there is filed with the articles one of the following:
    a. The written consent of the Tribal corporation or other legal entity authorized or registered to do business on the Reservation or the holder of a reserved name or a name filed by or registered with the Tribal Secretary having a name that is not distinguishable;
    b. A certified copy of a final decree of the Court establishing the prior right of the applicant to the use of the name on the Reservation, or establishing that the corporation or other legal entity with the name that is not distinguishable has been incorporated or on file with the Tribal Secretary for at least three years prior thereto, and has been totally inactive, provided notice of a hearing on the matter has been given to such corporation or entity, if possible.

Subdivision 2. Names continued. Subdivision 1, clause (d) does not affect the right of a Tribal corporation existing on the effective date of this Code, or a foreign corporation authorized to do business on the Reservation on that date to continue the use of its name.

Subdivision 3. Determination. The Tribal Secretary shall determine whether a name is distinguishable from another name for purposes of this Section and Section 11-117.

Subdivision 4. Other laws affecting use of names. This Section and Section 11-117 do not abrogate or limit any law of unfair competition or unfair practices, nor any Trademark Code, nor the laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, service marks, or any other rights to the exclusive use of names or symbols, nor derogate the common law or the principles of equity.

Subdivision 5. Use of name by successor corporation. A corporation that is merged with another tribal or foreign corporation, or that is incorporated by the reorganization of one or more tribal or foreign corporations, or that acquires by sale, lease, or other disposition to or exchange with a tribal corporation all or substantially all of the assets of another tribal or foreign corporation including its name, may have the same name as that used on the Reservation by any of the other corporations, if the other corporation was incorporated under the laws of the Tribe, or is authorized to transact business on the Reservation.

Subdivision 6. Injunction. The use of a name by a corporation in violation of this Section does not affect or vitiate its corporate existence, but the Court may, upon application of the Tribe or of a person interested or affected, enjoin the corporation from doing business under a name assumed in violation of this Section, although its articles may have been filed with the Tribal Secretary and a certificate of incorporation issued. [TCR 94-124, 95-101]

11-117 Reserved name.

Subdivision 1. Who may reserve. The exclusive right to the use of a corporate name otherwise permitted by Section 11-115 may be reserved by:

1. A person doing business on the Reservation under that name;
2. A person intending to incorporate under this Code;
3. A Tribal corporation intending to change its name;
4. A foreign corporation intending to make application for a certificate of authority to transact business on the Reservation;
5. A foreign corporation authorized to transact business on the Reservation and intending to change its name;
6. A person intending to incorporate a foreign corporation and intending to have the foreign corporation make application for a certificate of authority to transact business on the Reservation; or
7. A foreign corporation doing business under that name or a name deceptively similar to that name in one or more states of the United States and not described in clause (4), (5), or (6).

Subdivision 2. Method of reservation. The reservation shall be made by filing with the Tribal Secretary a request that the name be reserved. If the name is available for use by the applicant, the Tribal Secretary shall reserve the name for the exclusive use of the applicant for a period of 12 months. The reservation may be renewed for successive 12-month periods.

Subdivision 3. Transfer of reservation. The right to the exclusive use of a corporate name reserved pursuant to this Section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing with the Tribal Secretary a notice of the transfer and specifying the name and address of the transferee. [TCR 94-124]

11-121 Registered office; registered agent.

Subdivision 1. Registered office. A corporation shall continuously maintain a registered office. A registered office need not be the same as the principal place of business or the principal executive office of the corporation.

Subdivision 2. Registered agent. A corporation may designate in its articles a registered agent. The registered agent may be a natural person residing on the Reservation, or a Tribal corporation. The registered agent must maintain an office that is identical with the registered office. [TCR 94-124]

11-123 Change of registered office or registered agent; change of name of registered agent.

Subdivision 1. Statement. A corporation may change its registered office, designate or change its registered agent, or state a change in the name of its registered agent, by filing with the Tribal Secretary a statement containing:

1. The name of the corporation;
2. If the address of its registered office is to be changed, the new address of its registered office;
3. If its registered agent is to be designated or changed, the name of its new registered agent;
4. If the name of its registered agent is to be changed, the name of its registered agent as changed;
5. A statement that the address of its registered office and the address of the office of its registered agent, as changed, will be identical; and
6. A statement that the change of registered office or registered agent was authorized by resolution approved by the affirmative vote of a majority of the directors present.

Subdivision 2. Resignation of agent. A registered agent of a corporation may resign by filing with the Tribal Secretary a signed written notice of resignation, including a statement that a signed copy of the notice has been given to the corporation at its principal executive office or to a legal representative of the corporation. The appointment of the agent terminates 30 days after the notice is filed with the Tribal Secretary.

Subdivision 3. Change of business address or name of agent. If the office address or name of a registered agent changes, the agent shall change the address of the registered office or the name of the registered agent, as the case may be, of each corporation represented by that agent by filing with the Tribal Secretary a statement as required in subdivision 1, except that it need be signed only by the registered agent, need not be responsive to clause (5) or (6), and must state that a copy of the statement has been mailed to each of those corporations or to the legal representative of each of those corporations. [TCR 94-124]

11-131 Amendment of Articles. The articles of a corporation may be amended at any time to include or modify any provision that is required or permitted to appear in the articles or to omit any provision not required to be included in the articles, except that when articles are amended to restate them, the name and address of each incorporator may be omitted. Unless otherwise provided in this Code, the articles may be amended or modified only in accordance with Sections 11-133 to 11-139. An amendment which merely restates the then-existing articles of incorporation, as amended, is not an amendment for the purposes of Section 11-215, subdivision 2, or 11-413, subdivision 9. [TCR 94-124]

11-133 Procedure for amendment before issuance of shares. Before the issuance of shares by a corporation, the articles may be amended pursuant to Section 11-171 by the incorporators or by the board. The articles may be amended by the board to change a statement pursuant to Section 11-401, subdivisions, establishing or fixing the rights and preferences of a class or series of shares before the issuance of any shares of that class or series. [TCR 94-124]

11-135 Procedure for amendment after issuance of shares.

Subdivision 1. Manner of amendment. After the issuance of shares by the corporation, the articles may be amended in the manner set forth in this Section.

Subdivision 2. Submission to shareholders. A resolution approved by the affirmative vote of a majority of the directors present, or proposed by a shareholder or shareholders holding three percent or more of the

voting power of the shares entitled to vote, that sets forth the proposed amendment shall be submitted to a vote at the next regular or special meeting of the shareholders of which notice has not yet been given but still can be timely given. Any number of amendments may be submitted to the shareholders and voted upon at one meeting, but the same or substantially the same amendment proposed by a shareholder or shareholders need not be submitted to the shareholders or be voted upon at more than one meeting during a 15-month period. The resolution may amend the articles in their entirety to restate and supersede the original articles and all amendments to them. The provisions of this subdivision regarding shareholder-proposed amendments do not apply to a corporation registered or reporting under the federal securities laws, to the extent that those provisions are in conflict with the federal securities laws or rules promulgated thereunder, in which case the federal securities laws or rules promulgated thereunder shall govern.

Subdivision 3. Notice. Written notice of the shareholders meeting setting forth the substance of the proposed amendment shall be given to each shareholder in the manner provided in Section 11-435 for the giving of notice of meetings of shareholders.

Subdivision 4. Approval by shareholders.

1. The proposed amendment is adopted when approved by the affirmative vote of the holders of a majority of the voting power of the shares present and entitled to vote, except as provided in paragraphs (2) and (3) and subdivision 5.
2. For a closely-held corporation, if the articles provide for a specified proportion or number equal to or larger than the majority necessary to transact a specified type of business at a meeting, or if it is proposed to amend the articles to provide for a specified proportion or number equal to or larger than the majority necessary to transact a specified type of business at a meeting, the affirmative vote necessary to add the provision to, or to amend an existing provision in, the articles is the larger of:
    a. The specified proportion or number or, in the absence of a specific provision, the affirmative vote necessary to transact the type of business described in the proposed amendment at a meeting immediately before the effectiveness of the proposed amendment; or
    b. The specified proportion or number that would, upon effectiveness of the proposed amendment, be necessary to transact the specified type of business at a meeting.
3. For corporations other than closely-held corporations, if the articles provide for a larger proportion or number to transact a specified type of business at a meeting, the affirmative vote of that larger proportion or number is necessary to amend the articles to decrease the proportion or number necessary to transact the business.

Subdivision 5. Certain restatements. An amendment that merely restates the existing articles, as amended, may be authorized by a resolution approved by the board and may, but need not, be submitted to and approved by the shareholders as provided in subdivisions 2, 3, and 4. [TCR 94-124]

11-137 Class or series voting on amendments. The holders of the outstanding shares of a class or series are entitled to vote as a class or series upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles, if the amendment would:

1. Increase or decrease the aggregate number of authorized shares of the class or series;
2. Effect an exchange, reclassification, or cancellation of all or part of the shares of the class or series;

3. Effect an exchange, or create a right of exchange, of all or any part of the share of another class or series for the shares of the class or series;
4. Change the rights or preferences of the shares of the class or series;
5. Change the shares of the class or series, whether with or without par value, in the same or a different number of shares, either with or without par value, of the same or another class or series;
6. Create a new class or series of shares having rights and preferences prior and superior to the shares of that class or series, or increase the rights and preferences or the number of authorized shares, of a class or series having rights and preferences prior or superior to the shares of that class or series;
7. Divide the shares of the class into series and determine the designation of each series and the variations in the relative rights and preferences between the shares of each series, or authorize the board to do so;
8. Limit or deny any existing preemptive rights of the shares of the class or series; or
9. Cancel or otherwise affect distributions on the shares of the class or series that have accrued but have not been declared. [TCR 94-124]

11-139 Articles of amendment. When an amendment has been adopted, articles of amendment shall be prepared that contain:

1. The name of the corporation;
2. The amendment adopted;
3. With respect to an amendment restating the articles, a statement that the amendment restating the articles correctly sets forth without change the corresponding provisions of the articles as previously amended if the amendment was approved only by the board;
4. If the amendment provides for but does not establish the manner for effecting an exchange, reclassification, division, combination, or cancellation of issued shares, a statement of the manner in which it will be effected; and
5. A statement that the amendment has been adopted pursuant to this Code. [TCR 94-124]

11-141 Effect of amendment.

Subdivision 1. Effect on cause of action. An amendment does not affect an existing cause of action in favor of or against the corporation, nor a pending suit to which the corporation is a party, nor the existing rights of persons other than shareholders.

Subdivision 2. Effect of change of name. If the corporate name is changed by the amendment, a suit brought by or against the corporation under its former name does not abate for that reason.

Subdivision 3. Effect of amendments restating, articles. When effective under Section 11-153, an amendment restating the articles in their entirety supersedes the original articles and all amendments to the original articles. [TCR 94-124]

11-151 Filing articles. Articles of incorporation and articles of amendment shall be filed with the Tribal Secretary. [TCR 94-124]

11-153 Effective date of articles. Articles of incorporation are effective and corporate existence begins when the articles of incorporation are filed with the Tribal Secretary accompanied by a payment of $125.00, which includes a $100.00 incorporation fee in addition to the $25.00 filing fee. Articles of amendment and articles of merger are effective when filed with the Tribal Secretary or at another time within 30 days after filing if the articles of amendment so provide. Articles of merger must be

accompanied by a fee of $125.00, which includes a $100.00 merger fee in addition to the $25.00 filing fee. [TCR 94-124]

11-155 Presumption; Certificate of Incorporation. When the articles of incorporation have been filed with the Tribal Secretary and the required fee has been paid to the Tribal Secretary, it is presumed that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated, and the Tribal Secretary shall issue a certificate of incorporation to the corporation, but this presumption does not apply against the Tribe in a proceeding to cancel or revoke the certificate of incorporation or to compel the involuntary dissolution of the corporation. [TCR 94-124]

TITLE 11
ARTICLE 1.16
POWERS

11-161 Powers.
11-163 Corporate seal.
11-165 Effect of lack of power; ultra vires.

11-161 Powers.

Subdivision 1. Generally, limitations. A corporation has the powers set forth in this Section, subject to any limitations provided in any other law of the Tribe or in its articles.

Subdivision 2. Duration. A corporation has perpetual duration.

Subdivision 3. Legal capacity. A corporation may sue and be sued, complain and defend and participate as a party or otherwise in any legal, administrative, or arbitration proceeding, in its corporate name.

Subdivision 4. Property ownership. A corporation may purchase, lease, or otherwise acquire, own, hold, improve, use, and otherwise deal in and with, real or personal property, or any interest therein, wherever situated.

Subdivision 5. Property disposition. A corporation may sell, convey, mortgage, create a security interest in, lease, exchange, transfer, or otherwise dispose of all or any part of its real or personal property, or any interest therein, wherever situated.

Subdivision 6. Trading in securities; obligations. A corporation may purchase, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, exchange, mortgage, lend, create a security interest in, or otherwise dispose of and otherwise use and deal in and with, securities or other interests in, or obligations of, a person or direct or indirect obligations of any Tribal or foreign government or instrumentality thereof.

Subdivision 7. Contracts; mortgages. A corporation may make contracts and incur liabilities, borrow money, issue it securities, and secure any of its obligations by mortgage of or creation of a security interest in all or any of its property, franchises and income.

Subdivision 8. Investment. A corporation may invest and reinvest its funds.

Subdivision 9. Holding property as security. A corporation may take and hold real and personal property, whether or not a kind sold or otherwise dealt in by the corporation, as security for the payment of money loaned, advanced, or invested.

Subdivision 10. Location. A corporation may conduct its business, carry on its operations, have offices, and exercise the powers granted by this Code anywhere in the universe.

Subdivision 11. Donations. A corporation may make donations, irrespective of corporate benefit, for the public welfare; for social, community, charitable, religious, educational, scientific, civic, literary, and for similar or related purposes.

Subdivision 12. Pensions; benefits. A corporation may pay pensions, retirement allowances, and compensation for past services to and for the benefit of, and establish, maintain, continue, and carry out, wholly or partially at the expense of the corporation, employee or incentive benefit plans, trusts, and provisions to or for the benefit of, and/or all of its and its related corporation officers, directors, employees, and agents and the families, dependents, and beneficiaries of any of them. It may indemnify and purchase and maintain insurance for and on behalf of a fiduciary of any of these employee benefit and incentive plans, trusts, and provisions.

Subdivision 13. Participating in management. A corporation may participate in any capacity in the promotion, organization, ownership, management, and operation of an organization or in any transaction, undertaking, or arrangement that the participating corporation would have power to conduct by itself, whether or not the participation involves sharing or delegation of control with or to others.

Subdivision 14. Insurance. A corporation may provide for its benefit life insurance and other insurance with respect to the services of any or all of its officers, directors, employees, and agents, or on the life of a shareholder for the purpose of acquiring at the death of the shareholder any or all shares in the corporation owned by the shareholder.

Subdivision 15. Corporate seal. A corporation may have, alter at pleasure, and use a corporate seal as provided in **S**ection 11-163.

Subdivision 16. Bylaws. A corporation may adopt, amend, and repeal bylaws relating to the management of the business or the regulation of the affairs of the corporation as provided in Section 11-181.

Subdivision 17. Committees. A corporation may establish committees of the board of directors, elect or appoint persons to the committees, and define their duties as provided in Section 11-241 and fix their compensation.

Subdivision 18. Officers; employees; agents. A corporation may elect or appoint officers, employees, and agents of the corporation, and define their duties as provided in Sections 11-301 to 11-361 and fix their compensation.

Subdivision 19. Securities. A corporation may issue securities and rights to purchase securities as provided in Sections 11-401 to 11-425.

Subdivision 20. Loans; Guaranties; sureties. A corporation may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist persons as provided in Section 11-501.

Subdivision 21. Advances. A corporation may make advances to its directors, officers and employees and those of its subsidiaries as provided in Section 11-505.

Subdivision 22. Indemnification. A corporation shall indemnify those persons identified in Section 11-521 against certain expenses and liabilities only as provided in Section 11-521 and may indemnify other persons.

Subdivision 23. Assumed names. A corporation may conduct all or part of its business under one or more assumed names, provided each assumed name is registered with the Tribal Secretary.

Subdivision 24. Other powers. A corporation may have and exercise all other powers necessary or convenient to effect any or all of the business purposes for which the corporation is incorporated.

Subdivision 25. Trust Land. Any corporation which holds an interest in trust land may not encumber that interest without the prior approval of the Tribal Council and the Area Director, Aberdeen Area Office Bureau of Indian Affairs.

Subdivision 26. Sovereign Immunity of the Tribe. Consent to suit by a corporation shall in no way extend to the Tribe, nor shall a consent to suit by a corporation in any way be deemed a waiver of any of the rights, privileges and immunities of the Tribe. [TCR 94-124]

11-163 Corporate seal.

Subdivision 1. Seal not required. A corporation may, but need not, have a corporate seal, and the use or non-use of a corporate seal does not affect the validity, recordability, or enforceability of a document or act. If a corporation has a corporate seal, the use of the seal by the corporation on a document is not necessary.

Subdivision 2. Required words; use. If a corporation has a corporate seal, the seal may consist of a mechanical imprinting device, or a rubber stamp with a facsimile of the seal affixed thereon, or a facsimile or reproduction of either. The seal need include only the word "Seal" but it may also include a part or all of the name of the corporation and a combination, derivation, or abbreviation of either or both of the phrases "Tribal Corporation," "Winnebago Tribe of Nebraska," and "Corporate Seal." If a corporate seal is used, it or a facsimile of it may be affixed, engraved, printed, placed, stamped with indelible ink, or in any other manner reproduced on any document. [TCR 94-124]

11-165 Effect of lack of power; ultra vires. The doing, continuing, or performing by a corporation of an act, or an executed or wholly or partially executory contract, conveyance or transfer to or by the corporation, if otherwise lawful is not invalid because the corporation was without the power to do, continue, or perform the act, contract, conveyance, or transfer, unless the lack of power is established in the Court:

1. In a proceeding by a shareholder against the corporation to enjoin the doing, continuing, or performing of the act, contract, conveyance, or transfer. If the unauthorized act, continuation, or performance sought to be enjoined is being, or to be, performed or made pursuant to a contract to which the corporation is a party, the Court may, if just and reasonable in the circumstances, set aside and enjoin the performance of the contract and in so doing may allow to the corporation or to the other parties to the contract compensation for the loss or damage sustained as a result of the action of the Court in setting aside and enjoining the performance of the contract;
2. In a proceeding by or in the name of the corporation, whether acting directly or through a legal representative, or through shareholders in a representative or derivative suit, against the incumbent or former officers or directors of the corporation for exceeding or otherwise violating their authority, or against a person having actual knowledge of the lack of power; or
3. In a proceeding by the Tribal Council, as provided in Section 11-757, to dissolve the corporation, or in a proceeding by the Tribal Council to enjoin the corporation from the transaction of unauthorized business. [TCR 94-124]

TITLE 11
ARTICLE 1.17
ORGANIZATION; BYLAWS

11-171 Organization. 11-181 Bylaws.

11-171 Organization.

Subdivision 1. Role of incorporators. If the first board is not named in the articles, the incorporators may elect the first board or may act as directors with all of the powers, rights, duties, and liabilities of directors, until directors are elected or until shares are issued, whichever occurs first.

Subdivision 2. Meeting. After the issuance of the certificate of incorporation, the incorporators or the directors named in the articles shall either hold an organizational meeting at the call of a majority of the incorporators or of the directors named in the articles, or take written action, for the purposes of transacting business and taking actions necessary or appropriate to complete the organization of the corporation, including, without limitations amending the articles, electing directors, adopting bylaws, electing officers, adopting banking resolutions, authorizing or ratifying the purchase, lease, or other acquisition of suitable space, furniture, furnishings, supplies, and materials, approving a corporate seal, approving forms of certificates or transaction statements for shares of the corporation, adopting a fiscal year for the corporation, accepting subscriptions for and issuing shares of the corporation, and making any appropriate tax elections. If a meeting is held, the person or persons calling the meeting shall give at least three days notice of the meeting to each incorporator or director named, stating the date, time, and place of the meeting. [TCR 94-124]

11-181 Bylaws.

Subdivision 1. Generally. A corporation may, but need not, have bylaws. Bylaws may contain any provision relating to the management of the business or the regulation of the affairs of the corporation not inconsistent with law or the articles.

Subdivision 2. Power of board. Initial bylaws may be adopted pursuant to Section 11-171 by the incorporators or by the first board. Unless reserved by the articles to the shareholders, the power to adopt, amend, or repeal the bylaws is vested in the board. The power of the board is subject to the power of the shareholders, exercisable in the manner provided in subdivision 3, to adopt, amend, or repeal bylaws adopted, amended, or repealed by the board. After the adoption of the initial bylaws, the board shall not adopt, amend, or repeal a bylaw fixing a quorum for meetings of shareholders, prescribing procedures for removing directors or filling vacancies in the board, or fixing the number of directors or their classifications, qualifications, or terms of office, but may adopt or amend a bylaw to increase the number of directors.

Subdivision 3. Power of shareholders; procedure. If a shareholder or shareholders holding three percent or more of the voting power of the shares entitled to vote propose a resolution for action by the shareholders to adopt, amend, or repeal bylaws adopted, amended, or repealed by the board and the resolution sets forth the provision or provisions proposed for adoption, amendment, or repeal the limitations and procedures for submitting, considering, and adopting the resolution are the same as provided in Section 11-135,

subdivisions 2 to 4, for amendment of the articles. The provisions of this subdivision regarding shareholder proposed amendments shall not apply to a corporation registered or reporting under the federal securities laws, to the extent that those provisions are in conflict with the federal securities laws or rules promulgated thereunder, in which case the federal securities laws or rules promulgated thereunder shall govern.
[TCR 94-124]

TITLE 11
ARTICLE 2
BOARD

11-201 Board.
11-203 Number.
11-205 Qualifications; election.
11-207 Terms.
11-209 Acts not void or voidable.
11-211 Compensation.
11-213 Classification of directors.
11-215 Cumulative voting for directors.
11-221 Resignation.
11-223 Removal of directors.
11-225 Vacancies.
11-231 Board meetings.
11-233 Absent directors.
11-235 Quorum.
11-237 Act of the board.
11-239 Action without meeting.
11-241 Committees.
11-251 Standard of conduct.
11-255 Director conflicts of interest.

11-201 Board.

Subdivision 1. Board to manager. The business and affairs of a corporation shall be managed by or under the direction of a board, subject to the provisions of subdivision 2 and Section 11-457. The members of the first board may be named in the articles or elected by the incorporators pursuant to Section 11-171 or by the shareholders.

Subdivision 2. Shareholder management. The holders of the shares entitled to vote for directors of the corporation may, by unanimous affirmative vote, take any action that this Code requires or permits the board to take. As to an action taken by the shareholders in that manner:

1. The directors have no duties, liabilities, or responsibilities as directors under this Code with respect to or arising from the action;
2. The shareholders collectively and individually have all of the duties, liabilities, and responsibilities of directors under this Code with respect to and arising from the action;
3. If the action relates to a matter required or permitted by this Code or by any other law to be approved or adopted by the board, either with or without approval or adoption by the shareholders, the action is deemed to have been approved or adopted by the board; and
4. A requirement that an instrument filed with a governmental agency contain a statement that the action has been approved and adopted by the board is satisfied by a statement that the shareholders have taken the action under this subdivision. [TCR 94-124]

11-203 Number. The board shall consist of one or more directors. The number of directors shall be fixed by or in the manner provided in the articles or bylaws. The number of directors may be increased or, subject to Section 11-223, decreased at any time by amendment to or in the manner provided in the articles or bylaws. [TCR 94-124]

11-205 Qualifications; election. Directors shall be natural persons. The method of election and any additional qualifications for directors may be imposed by or in the manner provided in the articles or bylaws. A director need not be a member of the Tribe unless the articles of incorporation or bylaws so prescribe. [TCR 94-124]

11-207 Terms. Unless fixed terms are provided for in the articles or bylaws, a director serves for an indefinite term that expires at the next regular meeting of the shareholders. A fixed term of a director shall not exceed five years. A director holds office for the term for which the director was elected and until a successor is elected and has qualified, or until the earlier death, resignation, removal, or disqualification of the director. [TCR 94-124]

11-209 Acts not void or voidable. The expiration of a director's term with or without the election of a qualified successor does not make prior or subsequent acts of the officers or the board void or voidable. [TCR 94-124]

11-211 Compensation. Subject to any limitations in the articles or bylaws, the board may fix the compensation of directors. [TCR 94-124]

11-213 Classification of directors. Directors may be divided into classes as provided in the articles or bylaws. [TCR 94-124]

11-215 Cumulative voting for directors.

Subdivision 1. Unless the articles provide that there shall be no cumulative voting, and except as provided in Section 11-223, subdivision 5, each shareholder entitled to vote for directors has the right to cumulate those votes in the election of directors by giving written notice of intent to cumulate those votes to any officer of the corporation before the meeting, or to the presiding officer at the meeting at which the election is to occur at any time before the election of directors at the meeting, in which case:

1. The presiding officer at the meeting shall announce, before the election of directors, that shareholders shall cumulate their votes; and
2. Each shareholder shall cumulate those votes either by casting for one candidate the number of votes equal to the number of directors to be elected multiplied by the number of votes represented by the shares, or by distributing all of those votes on the same principle among any number of candidates.

Subdivision 2. Modification. No amendment to the articles or bylaws which has the effect of denying, limiting, or modifying the right to cumulative voting for directors provided in this Section shall be adopted if the votes of a proportion of the voting power sufficient to elect a director at an election of the entire board under cumulative voting, are cast against the amendment. [TCR 94-124]

11-221 Resignation. A director may resign at any time by giving written notice to the corporation. The resignation is effective without acceptance when the notice is given to the corporation, unless a later effective time is specified in the notice. [TCR 94-124]

11-223 Removal of directors.

Subdivision 1. Modification. The provisions of this Section apply unless modified by the articles, the bylaws, or an agreement described in **S**ection 11-457.

Subdivision 2. Removal of directors. A director may be removed at any time, with or without cause if:

1. The director was named by the board to fill a vacancy;

2. The shareholders have not elected directors in the interval between the time of the appointment to fill a vacancy and the time of the removal; and
3. A majority of the remaining directors present affirmatively vote to remove the director.

Subdivision 3. Removal by shareholders. One or all of the directors may be removed at any time, with or without cause, by the affirmative vote of the holders of the proportion or number of the voting power of the shares of the classes or series the director represents sufficient to elect them, except as provided in subdivision 4.

Subdivision 4. Exception for corporation with cumulative voting. In a corporation having cumulative voting, unless the entire board is removed simultaneously, a director is not removed from the board if there are cast against removal of the director the votes of a proportion of the voting power sufficient to elect the director at an election of the entire board under cumulative voting.

Subdivision 5. Election of replacements. New directors may be elected at a meeting at which directors are removed. If the corporation allows cumulative voting and a shareholder notifies the presiding officer at any time prior to the election of new directors of intent to cumulate the votes of the shareholder, the presiding officer shall announce before the election that cumulative voting is in effect, and shareholders shall cumulate their votes as provided in Section 11-215, clause (2). [TCR 94-124]

11-225 Vacancies. Unless different rules for filling vacancies are provided for in the articles or bylaws:

1.
   a. Vacancies on the board resulting from the death, resignation, removal, or disqualification of a director may be filled by the affirmative vote of a majority of the remaining directors, even though less than a quorum; and
   b. Vacancies on the board resulting from newly created directorships may be filled by the affirmative vote of a majority of directors serving at the time of the increase; and
2. Each director elected under this Section to fill a vacancy holds office until a qualified successor is elected by the shareholders at the next regular or special meeting of the shareholders. [TCR 94-124]

11-231 Board meetings.

Subdivision 1. Time; place. Meetings of the board may be held from time to time as provided in the articles or bylaws at any place within or without the reservation that the board may select or by any means described in subdivision 2. If the board fails to select a place for a meeting, the meeting shall be held at the principal executive office, unless the articles or bylaws provide otherwise.

Subdivision 2. Electronic communications.

1. A conference among directors by any means of communication through which the directors may simultaneously hear each other during the conference constitutes a board meeting, if the same notice is given of the conference as would be required by subdivision 3 for a meeting, and if the number of directors participating in the conference would be sufficient to constitute a quorum at a meeting's participation in a meeting by that means constitutes presence in person at the meeting.
2. A director may participate in a board meeting not described in paragraph (a) by any means of communication through which the director, other directors so participating, and all directors

physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by that means constitutes presence in person at the meeting.

Subdivision 3. Call, meetings notice. Unless the articles or bylaws provide for a different time period, a director may call a board meeting by giving ten days notice to all directors of the date, time, and place of the meeting. The notice need not state the purpose of the meeting unless the articles or bylaws require it.

Subdivision 4. Previously scheduled meetings. If the day or date, time, and place of a board meeting have been provided in the articles or bylaws, or announced at a previous meeting of the board, no notice is required. Notice of adjourned meeting may not be given other than by announcement at the meeting at which adjournment is taken.

Subdivision 5. Waiver of notice. A director may waive notice of a meeting of the board. A waiver of notice by a director entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, orally, or by attendance. Attendance by a director at a meeting is a waiver of notice of that meeting, except where the director objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate thereafter in the meeting. [TCR 94-124]

11-233 Absent directors. If the articles or bylaws so provide, a director may give advance written consent or opposition to a proposal to be acted on at a board meeting. If the director is not present at the meeting, consent or opposition to a proposal does not constitute presence for purposes of determining the existence of a quorum, but consent or opposition shall be counted as a vote in favor of or against the proposal and shall be entered in the minutes or other record of action at the meeting, if the proposal acted on at the meeting is substantially the same or has substantially the same effect as the proposal to which the director has consented or objected.

11-235 Quorum. A majority, or a larger or smaller proportion or number provided in the articles or bylaws, of the directors currently holding office is a quorum for the transaction of business. In the absence of a quorum, a majority of the directors present may adjourn a meeting from time to time until a quorum is present. If a quorum is present when a duly called or held meeting is convened, the directors present may continue to transact business until adjournment, even though the withdrawal of a number of directors originally present leaves less than the proportion or number otherwise required for a quorum. [TCR 94-124]

11-237 Act of the board. The board shall take action by the affirmative vote of a majority of directors present at a duly held meeting, except where this Code or the articles require the affirmative vote of a larger proportion or number. If the articles require a larger proportion or number than is required by this Code for a particular action, the articles shall control. [TCR 94-124]

11-239 Action without meeting.

Subdivision 1. Method. An action required or permitted to be taken at a board meeting may be taken by written action signed by all of the directors. If the articles so provide, any action, other than an action requiring shareholder approval, may be taken by written action signed by the number of directors that would be required to take the same action at a meeting of the board at which all directors were present.

Subdivision 2. Effective time. The written action is effective when signed by the required number of directors, unless a different effective time is provided in the written action.

Subdivision 3. Notice; liability. When written action is permitted to be taken by less than all directors, all directors shall be notified immediately of its text and effective date. Failure to provide the notice does not invalidate the written action. A director who does not sign or consent to the written action has no liability for the action or actions taken thereby. [TCR 94-124]

11-241 Committees.

Subdivision 1. Generally. A resolution approved by the affirmative vote of a majority of the board may establish committees having the authority of the board in the management of the business of the corporation only to the extent provided in the resolution. Committees may include a special litigation committee consisting of one or more independent directors or other independent persons to consider legal rights or remedies of the corporation and whether those rights and remedies should be pursued. Committees other than special litigation committees are subject at all times to the direction and control of the board.

Subdivision 2. Membership. Committee members shall be natural persons. Unless the articles or bylaws provide for a different membership or manner of appointment, a committee shall consist of one or more persons, who need not be directors, appointed by affirmative vote of a majority of the directors present.

Subdivision 3. Procedure. Sections 11-231 to 11-239 apply to committees and members of committees to the same extent as those sections apply to the board and directors.

Subdivision 4. Minutes. Minutes, if any, of committee meetings shall be made available upon request to members of the committee and to any director.

Subdivision 5. Standard of conduct. The establishment of, delegation of authority to, and action by a committee does not alone constitute compliance by a director with the standard of conduct set forth in Section 11-251.

Subdivision 6. Committee members deemed directors. Committee members are deemed to be directors for purposes of Sections 11-251, 11-255, and 11-521. [TCR 94-124]

11-251 Standard of conduct.

Subdivision 1. Standard; liability. A director shall discharge the duties of the position of director in good faith, in a manner the director reasonably believes to be in the best interests of the corporation, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A person who so performs those duties is not liable by reason of being or having been a director of the corporation.

Subdivision 2. Reliance.

1. A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:
    a. one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;
    b. counsel, public accountants, or other persons as to matters that the director reasonably believes are within the person's professional or expert competence; or

c. a committee of the board upon which the director does not serve, duly established in accordance with Section 11-241, as to matters within its designated authority, if the director reasonably believes the committee to merit confidence.

2. Paragraph (a) does not apply to a director who has knowledge concerning the matter in question that makes the reliance otherwise permitted by paragraph (a) unwarranted.

Subdivision 3. Presumption of assent; dissent. A director who is present at a meeting of the board when an action is approved by the affirmative vote of a majority of the directors present is presumed to have assented to the action approved, unless the director:

1. Objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate thereafter in the meeting, in which case the director shall not be considered to be present at the meeting for any purpose of this Code;
2. Votes against the action at the meeting; or
3. Is prohibited by Section 11-255 from voting on the action.

Subdivision 4. Elimination or limitation of liability. A director's personal liability to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director may be eliminated or limited in the articles. The articles shall not eliminate or limit the liability of a director:

1. for any breach of the director's duty of loyalty to the corporation or its shareholders;
2. for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
3. under Section 11-559;
4. for any transaction from which the director derived an improper personal benefit; or
5. for any act or omission occurring prior to the date when the provision in the articles eliminating or limiting liability becomes effective. [TCR 94-124]

11-255 Director conflicts of interest.

Subdivision 1. Conflict; procedure when conflict arises. A contract or other transaction between a corporation and one or more of its directors, or between a corporation and an organization in or of which one or more of its directors are directors, officers, or legal representatives or have a material financial interest, is not void or voidable because the director or directors or the other organizations are parties or because the director or directors are present at the meeting of the shareholders or the board or a committee at which the contract or transaction is authorized, approved, or ratified, if:

1. The contract or transaction was, and the person asserting the validity of the contract or transaction sustains the burden of establishing, that the contract or transaction was, fair and reasonable as to the corporation at the time it was authorized, approved, or ratified;
2. The material facts as to the contract or transaction and as to the director or directors' interest are fully disclosed or known to the shareholders and the contract or transaction is approved in good faith by (1) the holders of two-thirds of the voting power of the shares entitled to vote which are owned by persons other than the interested director or directors, or (2) the unanimous affirmative vote of the holders of all outstanding shares, whether or not entitled to vote;
3. The material facts as to the contract or transaction and as to the director or directors' interest are fully disclosed or known to the board or a committee, and the board or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of the board or

committee, but the interested director or directors shall not be counted in determining the presence of a quorum and shall not vote; or

4. The contract or transaction is a distribution described in Section 11-551, subdivision 1, or merger or exchange described in Section 11-601, subdivision 1 or2.

Subdivision 2. Material financial interest. For purposes of this Section:

1. A director does not have a material financial interest in a resolution fixing the compensation of the director or fixing the compensation of another director as a director, officer, employee, or agent of the corporation, even though the first director is also receiving compensation from the corporation; and
2. A director has a material financial interest in each organization in which the director, or the spouse, parents, children and spouses of children, brothers and sisters and spouses of brothers and sisters of the director, or any combination of them have a material financial interest.

Subdivision 3. Compensation agreements. During any tender offer or request or invitation for tenders of any class or series of shares of a publicly-held corporation, other than an offer, request, or invitation by the publicly-held corporation, the publicly-held corporation shall not enter into or amend, directly or indirectly, agreements containing provisions, whether or not dependent on the occurrence of any event or contingency, that increase, directly or indirectly, the current or future compensation of any officer or director of the publicly-held corporation. This subdivision does not prohibit routine increases in compensation, or other routine compensation agreements, undertaken in the ordinary course of the publicly-held corporation's business. [TCR 94-124]

TITLE 11
ARTICLE 3
OFFICERS

11-301 Officers required.
11-305 Duties of required officers.
11-311 Other officers.
11-315 Multiple offices.
11-321 Officers deemed elected.
11-331 Contract rights.
11-341 Resignation; removal; vacancies.
11-351 Delegation.
11-361 Standard of conduct.

11-301 Officers required. A corporation shall have one or more natural persons exercising the functions of the offices, however designated, of chief executive officer and chief financial officer. [TCR 94-124]

11-305 Duties of required officers.

Subdivision 1. Presumption; modifications. Unless the articles, the bylaws, or a resolution adopted by the board and not inconsistent with the articles or bylaws, provide otherwise, the chief executive officer and chief financial officer have the duties specified in this Section.

Subdivision 2. Chief executive officer. The chief executive officer shall:

1. Have general active management of the business of the corporation;
2. When present, preside at all meetings of the board and of the shareholders;
3. See that all orders and resolutions of the board are carried into effect;
4. Sign and deliver in the name of the corporation any deeds, mortgages, bonds, contracts or other instruments pertaining to the business of the corporation, except in cases in which the authority to sign and deliver is required by law to be exercised by another person or is expressly delegated by the articles or bylaws or by the board to some other officer or agent of the corporation;
5. Maintain records of and whenever necessary, certify all proceedings of the board and the shareholders; and
6. Perform other duties prescribed by the board.

Subdivision 3. Chief financial officer. The chief financial officer shall:

1. Keep accurate financial records for the corporation;
2. Deposit all money, drafts, and checks in the name of and to the credit of the corporation in the banks and depositories designated by the board;
3. Endorse for deposit all notes, checks, and drafts received by the corporation as ordered by the board, making proper vouchers therefor;
4. Disburse corporate funds and issue checks and drafts in the name of the corporation, as ordered by the board;
5. Render to the chief executive officer and the board, whenever requested, an account of all transactions by the chief financial officer and of the financial condition of the corporation; and
6. Perform other duties prescribed by the board or by the chief executive officer. [TCR 94-124]

11-311 Other officers. The board may elect or appoint, at a manner set forth in the articles or bylaws or in a resolution approved by the affirmative vote of a majority of the directors present, any other officers

or agents the board deems necessary for the operation and management of the corporation, each of whom shall have the powers, rights, duties, responsibilities, and terms in office provided for in the articles or bylaws or determined by the board. [TCR 94-124]

11-315 Multiple offices. Any number of offices or functions of those offices may be held or exercised by the same person. If a document must be signed by persons holding different offices or functions and a person holds or exercises more than one of those offices or functions, that person may sign the document in more than one capacity, but only if the document indicates each capacity in which the person signs. [TCR 94-124]

11-321 Officers deemed elected. In the absence of an election or appointment of officers by the board, the person or persons exercising the principal functions of the chief executive officer or the chief financial officer are deemed to have been elected to those offices, except for the purpose of determining the location of the principal executive office, which in that case is the registered office of the corporation. [TCR 94-124]

11-331 Contract rights. The election or appointment of a person as an officer or agent does not, of itself, create contract rights. A corporation may enter into a contract with an officer or agent for a period of time if, in the board's judgment, the contract would be in the best interests of the corporation. The fact that the contract may be for a term longer than the terms of the directors who authorized or approved the contract does not make the contract void or voidable. [TCR 94-124]

11-341 Resignation; removal; vacancies.

Subdivision 1. Resignation. An officer may resign at any time by giving written notice to the corporation. The resignation is effective without acceptance when the notice is given to the corporation, unless a later effective date is specified in the notice.

Subdivision 2. Removal. An officer may be removed at any time, with or without cause by a resolution approved by the affirmative vote of a majority of the directors present, subject to the provisions of a shareholder control agreement. The removal is without prejudice to any contractual rights of the officer.

Subdivision 3. Vacancy. A vacancy in an office because of death, resignation, removal, disqualification, or other cause may, or in the case of a vacancy in the office of chief executive officer or chief financial officer shall, be filled for the unexpired portion of the term in the manner provided in the articles or bylaws, or determined by the board, or pursuant to Section 11-321. [TCR 94-124]

11-351 Delegation. Unless prohibited by the articles or bylaws or by a resolution approved by the affirmative vote of a majority of the directors present, an officer elected or appointed by the board may, without the approval of the board, delegate some or all of the duties and powers of an office to other persons. An officer who delegates the duties or powers of office remains subject to the standard of conduct for an officer with respect to the discharge of all duties and powers so delegated. [TCR 94-124]

11-361 Standard of conduct. An officer shall discharge the duties of an office in good faith, in a manner the officer reasonably believes to be in the best interests of the corporation, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A person exercising the principal functions of an office or to whom some or all of the duties and powers of an office are delegated pursuant to Section 11-351 is deemed an officer for purposes of this Section and Sections 11-467 and 11-521. [TCR 94-124]

TITLE 11
ARTICLE 4
SHARES; SHAREHOLDERS

11-401 Authorized shares.
11-402 Share dividends, divisions, and combinations.
11-403 Subscriptions for shares.
11-405 Consideration for shares; value and payment; liability.
11-413 Preemptive rights.
11-417 Share certificates; issuance and contents; uncertificated shares.
11-419 Lost share certificates; replacement.
11-423 Fractional shares.
11-425 Liability of subscribers and shareholders with respect to shares.
11-429 Restriction on transfer or registration of securities.
11-431 Regular meetings of shareholders.
11-433 Special meetings of shareholders.
11-435 Notice.
11-436 Electronic communications.
11-437 Act of the shareholders.
11-441 Action without a meeting.
11-443 Quorum.
11-445 Voting rights.
11-447 Voting of shares by organizations and legal representatives.
11-449 Proxies.
11-453 Voting trusts.
11-455 Shareholder voting agreements.
11-457 Shareholder control agreements.
11-461 Books and records; inspection.
11-463 Financial statements.
11-467 Equitable remedies.
11-471 Rights of dissenting shareholders.
11-473 Procedures for asserting dissenter's rights.

11-401 Authorized shares.

Subdivision 1. Board may authorize. Subject to any restrictions in the articles, a corporation may issue securities and rights to purchase securities only when authorized by the board.

Subdivision 2. Terms of shares. All the shares of a corporation:

1. Shall be of one class and one series, unless the articles establish, or authorize the board to establish, more than one class or series;
2. Shall be common shares entitled to vote and shall have equal rights and preferences in all matters not otherwise provided for by the board, unless and to the extent that the articles have fixed the relative rights and preferences of different classes and series; and
3. Shall have, unless a different par value is specified in the articles, a par value of one cent per share, solely for the purpose of a law**,** statute or rule imposing a tax or fee based upon the capitalization of a corporation and a par value fixed by the board for the purpose of a statute or rule requiring the shares of the corporation to have a par value.

Subdivision 3. Procedure for fixing terms.

1. Subject to any restrictions in the articles, the power granted in subdivision 2 may lie exercised by a resolution or resolutions approved by the affirmative vote of a majority of the directors present establishing a class or series, setting forth the designation of the class or series, and fixing the relative rights and preferences of the class or series. Any of the rights and preferences of a class or series:
   a. may be made, dependent upon facts ascertainable outside the articles, or outside the resolution or resolutions establishing the class or series, provided that the manner in which

the facts operate upon the rights and preferences of the class or series is clearly and expressly set forth in the articles or in the resolution or resolutions establishing the class or series; and

b. may incorporate by reference some or all of the terms of any agreements, contracts, or other arrangements entered into by the issuing corporation in connection with the establishment of the class or series if the corporation retains at its principal executive office a copy of the agreements, contracts or other arrangements or the portions incorporated by reference.

2. A statement setting forth the name of the corporation and the text of the resolution and certifying the adoption of the resolution and the date of adoption shall be filed with the Tribal Secretary before the issuance of any shares for which the resolution creates rights or preferences not set forth in the articles; provided, however, where the shareholders have received notice of the creation of shares with rights or preferences not set forth in the articles before the issuance of the shares, the statement may be filed any time within one year after the issuance of the shares. The resolution is effective when the statement has been filed with the Tribal Secretary; or, if it is not required to be filed with the Tribal Secretary before the issuance of shares, on the date of its adoption by the directors.
3. A statement filed with the Tribal Secretary in accordance with paragraph (b) is not considered an amendment of the articles for purposes of Sections 11-137 and 11-471.

Subdivision 4. Specific terms. Without limiting the authority granted in this Section, a corporation may issue shares of a class or series:

1. Subject to the right of the corporation to redeem any of those shares at the price fixed for their redemption by the articles or by the board or at a price determined in the manner specified by the articles or by the board;
2. Entitling the shareholders to cumulative, partially cumulative, or non-cumulative distributions in the amounts fixed by the articles or by the board or in amounts determined in the manner specified by the articles or by the board;
3. Having preference over any class or series of shares for the payment of distributions of any kinds;
4. Convertible into shares of any other class or any series of the same or another class on the terms fixed by the articles or by the board or on terms determined in the manner specified by the articles or by the board; or
5. Having full, partial, or no voting rights, except as provided in Section 11-137. [TCR 94-124]

11-402 Share dividends, divisions, and combinations.

Subdivision 1. Power to effect. A corporation may effect a share dividend or a division or combination of its shares as provided in this Section. As used in this Section, the terms “division” and “combination” mean dividing or combining shares of any class or series, whether issued or unissued, into a greater or lesser number of shares of the same class or series.

Subdivision 2. When shareholder approval required; filing of articles of amendment. Articles of amendment must be adopted by the board and the shareholders tender Sections 11-135 and 11-137 to effect a division or combination if, as a result of the proposed division or combination:

1. The rights or preferences of the holders of outstanding shares of any class or series will be adversely affected.

2. The percentage of authorized shares remaining unissued after the division or combination will exceed the percentage of authorized shares that were unissued before the division or combination. For purposes of this Section, an increase or decrease in the relative voting right of the shares that are the subject of the division or combination that arises solely from the increase or decrease in the number of the shares outstanding is not an adverse effect on the outstanding shares of any class or series and any increase in the percentage of authorized shares remaining unissued arising solely from the elimination of fraction shares under Section 11-423 must be disregarded.
3. If a division or combination is effected under this subdivision, articles of amendment must be prepared that contain the information required by Section 11-139.

Subdivision 3. By action of board alone; filing of articles of amendment.

1. Subject to the restrictions provided in subdivision 2 or any restrictions in the articles, a share dividend, division, or combination may be effected by action of the board alone, without the approval of shareholders under Sections 11-135 and 11-137. In effecting division or combination under this subdivision, the board may amend the articles to increase or decrease the par value of shares, increase or decrease the number of authorized shares, and make any other changes necessary or appropriate to assure that the rights or preferences of the holders of outstanding big shares of any class or series will not be adversely affected by the division or combination.
2. If a division or combination that includes an amendment of the articles is effected under this subdivision, then articles of amendment must be prepared that contain the information required by Section 11-139 and a statement that the amendment will not adversely affect the rights or preferences of the holders of outstanding shares of any class or series and will not result in the percentage of authorized shares that remains unissued after the division or combination exceeding the percentage of authorized shares that were unissued before the division or combination. [TCR 94-124]

11-403 Subscriptions for shares.

Subdivision 1. Signed writing. A subscription for shares, whether made before or after the incorporation of a corporation, is not enforceable against the subscriber unless it is in writing and signed by the subscriber.

Subdivision 2. Irrevocable period. A subscription for shares is irrevocable for a period of six months, unless the subscription agreement provides for, or unless all of the subscribers consent to, an earlier revocation.

Subdivision 3. Payment; installments. A subscription for shares, whether made before or after the incorporation of a corporation, shall be paid in full at the time or times or in the installments, if any, specified in the subscription agreement. In the absence of a provision in the subscription agreement specifying the time at which the subscription is to be paid, the subscription shall be paid at the time or times determined by the board but a call made by the board for payment on subscriptions shall be uniform for all shares of the same class or for all shares of the same series.

Subdivision 4. Method of collection; forfeiture; cancellation or sale for account of subscriber.

1. Unless otherwise provided in the subscription agreement, in the event of default in the payment of an installment or call when due, the corporation may proceed to collect the amount due in the same manner as a debt due the corporation.

2. If the amount due on a subscription for shares remains unpaid for a period of 20 days after written notice of demand for payment has been given to the delinquent subscriber, the shares subscribed for may be offered for sale by the corporation for a price in money equaling or exceeding the sum of the full balance owed by the delinquent subscriber plus the expenses incidental to the sale. If the shares subscribed for are sold pursuant to this paragraph, the corporation shall pay to the delinquent subscriber or to the delinquent subscriber's legal representative the lesser of (i) the excess of net proceeds realized by the corporation over the sum of the amount owed by the delinquent subscriber plus the expenses incidental to the sale, and (ii) the amount actually paid by the delinquent subscriber. If the shares subscribed for are not sold pursuant to this paragraph, the corporation may collect the amount due in the same manner as a debt due the corporation or cancel the subscription in accordance with paragraph (3).
3. If the amount due on a subscription for shares remains unpaid for a period of 20 days after written notice of demand for payment has been given to the delinquent subscriber and the shares subscribed for by the delinquent subscriber have not been sold pursuant to paragraph (b), the corporation may cancel the subscription, in which event the shares subscribed for must be restored to the status of authorized but unissued shares, the corporation may retain the portion of the subscription price actually paid that does not exceed ten percent of the subscription price, and the corporation shall refund to the delinquent subscriber or the delinquent subscriber's legal representative that portion of the subscription price actually paid which exceeds ten percent of the subscription price. [TCR 94-124]

11-405 Consideration for shares; value and payment; liability.

Subdivision 1. Consideration; procedure. Subject to any restrictions in the articles:

1. Shares may be issued for any consideration, including, without limitation, money or other tangible or intangible property received by the corporation or to be received by the corporation under a written agreement, or services rendered to the corporation or to be rendered to the corporation under a written agreement, as authorized by resolution approved by the affirmative vote of a majority of the directors present, or approved by the affirmative vote of the holders of a majority of the voting power of the shares present, valuing all non-monetary consideration and establishing a price in money or other consideration, or a minimum price, or a general formula or method by which the price will be determined; and
2. Upon authorization in accordance with Section 11-402, the corporation may, without any new or additional consideration, issue its own shares in exchange for or in conversion of its outstanding shares, or issue its own shares pro-rata to its shareholders or the shareholders of one or more classes or series, to effectuate share dividends, divisions, or combinations. No shares of a class or series, shares of which are then outstanding, shall be issued to the holders of shares of another class or series (except in exchange for or in conversion of outstanding, shares of the other class or series), unless the issuance either is expressly provided for in the articles or is approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares of the same class or series as the shares to be issued.

Subdivision 2. Value; liability. The determinations of the board or the shareholders as to the amount or fair value or the fairness to the corporation of the consideration received or to be received by the corporation for its shares or the terms of payments, as well as the agreement to issue shares for that consideration, are presumed to be proper if they are made in good faith and on the basis of accounting methods, or a fair valuation or other method, reasonable in the circumstances, and unless otherwise required by the articles, the consideration may be less than the par value, if any, of the shares. Directors or

shareholders who are present and entitled to vote, and who, intentionally or without reasonable investigation, fail to vote against approving, an issue of shares for a consideration that is unfair to the corporation, or over-value property or services received or to be received by the corporation as consideration for shares issued, are jointly and severally liable to the corporation for the benefit of the then shareholders who did not consent to find are damaged by the action, to the extent of the damages of those shareholders. A director or shareholder against whom a claim is asserted pursuant to this subdivision, except in case of knowing participation in a deliberate fraud, is entitled to contribution on an equitable basis from other directors or shareholders who are liable under this Section.

Subdivision 3. Payment; liability; contribution; statute of limitations.

1. A corporation shall issue only shares that are nonassessable or that are assessable but are issued with the unanimous consent of the shareholders. "Nonassessable" shares are shares for which the agreed consideration has been fully paid, delivered, or rendered to the corporation. Consideration in the form of a promissory note, a check, or a written agreement to transfer property or render services to a corporation in the future is fully paid when the note, check, or written agreement is delivered to the corporation.
2. If shares are issued if violation of paragraph (a), the following persons are jointly and severally liable to the corporation for the difference between the agreed consideration for the shares and the consideration actually received by the corporation:
    a. A director or shareholder who was present and entitled to vote but who failed to vote against the issuance of the shares knowing of the violation;
    b. The person to whom the shares were issued; and
    c. A successor or transferee of the interest in the corporation of a person described in clause (1) or (2), including a purchaser of shares, a subsequent assignee, successor, or transferee, a pledgee, a holder of any other security interest in the assets of the corporation or shares granted by the person described in clause (a) or (b), or a legal representative of or for the person or estate of the person, which successor, transferee, purchaser, assignee, pledgee, holder, or representative acquired the interest knowing of the violation.
3.
    a. A pledgee or holder of any other security interest in all or any shares that have been issued in violation of paragraph (1) is not liable under paragraph (2) if all those shares are surrendered to the corporation. The surrender does not impair any rights of the pledgee or holder of any other security interest against the pledgor or person granting the security interest.
    b. A pledgee, holder of any other security interest, or legal representative is liable under paragraph (2) only in that capacity. The liability of the person under paragraph (2) is limited to the assets held in that capacity for the person or estate of the person described in clause (a) or (b) of paragraph (2).
    c. Each person liable under paragraph (2) has a full right of contribution on an equitable basis from all other persons liable under paragraph (2) for the same transaction.
    d. An action shall not be maintained against a person under paragraph (b) unless commenced within two years from the date on which shares are issued in violation of paragraph (1). [TCR 94-124]

11-413 Preemptive rights.

Subdivision 1. Presumption; modification. Unless denied or limited in the articles or by the board pursuant to Section 11-401, subdivision 2, clause (b), a shareholder of a corporation has the preemptive rights provided in this Section.

Subdivision 2. Definition. A preemptive right is the right of a shareholder to acquire a certain fraction of the unissued securities or rights to purchase securities of a corporation before the corporation may offer them to other persons.

Subdivision 3. When right accrues. A shareholder has a preemptive right whenever the corporation proposes to issue new or additional shares or rights to purchase shares of the same series as the series held by the shareholder or, if a class of shares has no series, the same class as the class held by the shareholder, or new or additional securities other than shares, or rights to purchase securities other than shares, that are exchangeable for, convertible into, or carry a right to acquire new or additional shares of the same series as the series held by the shareholder or, if a class of shares has no series, the same class as the class held by the shareholder.

Subdivision 4. Exemptions. A shareholder does not have a preemptive right to acquire securities or rights to purchase securities that are:

1. Issued for a consideration other than money;
2. Issued pursuant to a plan of merger or exchange;
3. Issued pursuant to an employee or incentive benefit plan approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote;
4. Issued upon exercise of previously issued rights to purchase securities of the corporation;
5. Issued pursuant to a public offering of the corporation's securities or rights to purchase securities. For purposes of this clause "public offering" means an offering of the corporation's securities or rights to purchase securities if the resale or other distribution of those securities or rights to purchase securities is not restricted by Tribal, state or federal securities laws; or
6. Issued pursuant to a plan of reorganization approved by a court of competent jurisdiction pursuant to a law of this Tribe or a statute of the United States.

Subdivision 5. Fraction to be acquired. The fraction of the new issue that each shareholder may acquire by exercise of a preemptive right is the ratio that the number of shares of that class or series owned by the shareholder before the new issue bears to the total number of shares of that class or series issued and outstanding before the new issue.

Subdivision 6. Waiver. A shareholder may waive a preemptive right in writing. The waiver is binding upon the shareholder whether or not consideration has been given for the waiver. Unless otherwise provided in the waiver, a waiver of preemptive rights is effective only for the proposed issuance described in the waiver.

Subdivision 7. Notice. When proposing the issuance of securities with respect to which shareholders have preemptive rights under this Section, the board shall cause notice to be given to each shareholder entitled to preemptive rights. This notice shall be given at least ten days before the date by which the shareholder must exercise a preemptive right and shall contain:

1. The number or amount of securities with respect to which the shareholder has a preemptive right, and the method used to determine that number or amount;
2. The price and other terms and conditions upon which the shareholder may purchase them; and
3. The time within which and the method by which the shareholder must exercise the right.

Subdivision 8. Issuance to others. Securities that are subject to preemptive rights but not acquired by shareholders in the exercise of those rights may, for a period not exceeding one year after the date fixed by the board for the exercise of those preemptive rights, be issued to persons the board determines, at a price not less than, and on terms no more favorable to the purchaser than, those offered to the shareholders. Securities that are not issued during that one year period shall, at the expiration of the period, again become subject to preemptive rights of shareholders.

Subdivision 9. Modification. No amendment to the articles which has the effect of denying, limiting, or modifying the preemptive rights provided in this Section shall be adopted if the votes of a proportion of the voting power sufficient to a director at an election of the entire board under cumulative voting are cast against the amendment. [TCR 94-124]

11-417 Share certificates; issuance and contents; uncertificated shares.

Subdivision 1. Certificated; uncertificated. The shares of a corporation shall be either certificated shares or uncertificated. Each holder of certificated shares issued in accordance with Section 11-405, subdivision 3, paragraph (1) is entitled to a certificate of shares.

Subdivision 2. Certificates; signature required. Certificates shall be signed by an agent or officer authorized by the articles or bylaws to sign share certificates or, in the absence of an authorization, by an officer.

Subdivision 3. Signature valid. If a person signs or has a facsimile signature placed upon a certificate while an officer, transfer agent, or registrar of a corporation is present, the certificate may be issued by the corporation, even if the person has ceased to have that capacity before the certificate is issued, with the same effect as if the person had that capacity at the date of its issue.

Subdivision 4. Form of certificate. A certificate representing shares of a corporation shall contain on its face:

1. The name of the corporation;
2. A statement that the corporation is incorporated under the laws of the Winnebago Tribe of Nebraska;
3. The name of the person to whom it is issued; and
4. The number and class of shares, and the designation of the series, if any, that the certificate represents.

Subdivision 5. Limitations set forth. A certificate representing shares issued by a corporation authorized to issue shares of more than one class or series shall set forth upon the face or back of the certificate, or shall state that the corporation will furnish to a shareholder upon request and without charge, a full statement of the designations, preferences, limitations, and relative rights of the shares of each class or series authorized to be issued, so far as they have been determined, and the authority of the board to determine the relative rights and preferences of subsequent classes or series.

Subdivision 6. Prima facie evidence. A certificate signed as provided in subdivision 2 is prima facie evidence of the ownership of the shares referred to in the certificate.

Subdivision 7. Uncertificated shares. Unless uncertificated shares are prohibited by the articles or bylaws, a resolution approved by the affirmative vote of a majority of the directors present may provide that some or all of any or all classes and series of its shares will be uncertificated shares. The resolution does not apply to shares represented by a certificate until the certificate is surrendered to the corporation. Within a reasonable time after issuance or transfer of uncertificated shares, the corporation shall send to the new shareholder the information required by this Section to be stated on certificates. Except as otherwise expressly provided by statute, the rights and obligations of the holders of certificated and uncertificated shares of the same class and series are identical. [TCR 94-124]

11-419 Lost share certificates; replacement.
Subdivision 1. Issuance. A new share certificate may be issued to replace one that is alleged to have been lost, stolen, or destroyed. The owner must (i) notify the issuer within a reasonable time after having notice of the loss and request a replacement before the issuer has notice that the security has been acquired by a bona fide purchaser; (ii) file with the issuer a sufficient indemnity bond; and (iii) satisfy any other reasonable requirements imposed by the issuer.

Subdivision 2. Not over issue. The issuance of a new certificate under this Section does not constitute an over issue of the shares it represents. [TCR 94-124]

11-423 Fractional shares.

Subdivision 1. Issuance; alternative exchange. A corporation may issue fractions of a share originally or upon transfer. If it does not issue fractions of a share, it shall in connection with an original issuance of shares:

1. Arrange for the disposition of fractional interests by those entitled to them;
2. Pay in money the fair value of fractions of a share as of the time when persons entitled to receive the fractions are determined; or
3. Issue scrip or warrants in registered or bearer form that entitle the holder to receive a certificate for a full share upon the surrender of the scrip or warrants aggregating a full share.

Subdivision 2. A corporation shall not pay money for fractional shares if that action would result in the cancellation of more than 20 percent of the outstanding shares of a class. A determination by the board of the fair value of fractions of a share is conclusive in the absence of fraud. A certificate or a transaction statement for a fractional share does, but scrip or warrants do not unless they provide otherwise, entitle the shareholder to exercise voting rights or to receive distributions. The board may cause scripts or warrants to be issued subject to the condition that they become void if not exchanged for full shares before a specified date, or that the shares for which scrip or warrants are exchangeable may be sold by the corporation and the proceeds distributed to the holder of the scrip or warrants, or to any other condition or set of conditions the board may impose. [TCR 94-124]

11-425 Liability of subscribers and shareholders with respect to shares. A subscriber for shares or a shareholder of a corporation is under no obligation to the corporation or its creditors with respect to the shares subscribed for or owned, except to pay to the corporation the full consideration for which the shares are issued or to be issued. [TCR 94-124]

11-429 Restriction on transfer or registration of securities.

Subdivision 1. How imposed. A restriction on the transfer or registration of transfer of securities of a corporation may be imposed in the articles, in the bylaws, by a resolution adopted by the shareholders, or by an agreement among or other written action by a number of shareholders or holders of other securities or among them and the corporation. A restriction is not binding with respect to securities issued prior to the adoption of the restriction, unless the holders of those securities are parties to the agreement or voted in favor of the restriction.

Subdivision 2. Restrictions permitted. A written restriction on the transfer or registration of transfer of securities of a corporation that is not manifestly unreasonable under the circumstances and is noted conspicuously on the face or back of the certificate or transaction statement may be enforced against the holder of the restricted or a successor or transferee of the holder, including a pledgee or a legal representative. Unless noted conspicuously on the face or back of the certificate or transaction statement, a restriction, even though permitted by this Section, is ineffective against a person without knowledge of the restriction. A restriction under this Section is deemed to be noted conspicuously and is effective if the existence of the restriction is stated on the certificate and reference is made to a separate document creating or describing the restriction. [TCR 94-124]

11-431 Regular meetings of shareholders.

Subdivision 1. Frequency. Regular meetings of shareholders may be held on an annual or other less frequent periodic basis, but need not be filed unless required by the articles or bylaws or by subdivision 2.

Subdivision 2. Demand by shareholder. If a regular meeting of shareholders has not been held during the immediately preceding 15 months, shareholders holding at least ten percent of the voting power of all shares entitled to vote may demand a regular meeting of shareholders by written notice of demand given to the chief executive officer or the chief financial officer of the corporation. Within 30 days after receipt of the demand by one of those officers, the board shall cause a regular meeting of shareholders to be called and held on notice no later than 90 days after receipt of the demand, all at the expense of the corporation. If the board fails to cause a regular meeting to be called and held as required by this subdivision, the shareholder or shareholders making the demand may call the regular meeting by giving notice as required by Section 11-435, all at the expense of the corporation.

Subdivision 3. Time; place. A regular meeting, if any, shall be held on the day or date and at the time and place fixed by, or in a manner authorized by, the articles or bylaws, except that a meeting called by or at the demand of a shareholder to subdivision 2 shall be held on the Reservation.

Subdivision 4. Elections required; other business. At each regular meeting of shareholders there shall be an election of qualified successors for directors who serve for an indefinite term or whose terms have expired or are due to expire within six months after the date of the meeting. No other particular business is required to be transacted at a regular meeting. Any business appropriate for action by the shareholders may be transacted at a regular meeting. [TCR 94-124]

11-433 Special meetings of shareholders.

Subdivision 1. Who may call. Special meetings of the shareholders may be called for any purpose or purposes at any time by:

1. The chief executive officer;
2. The chief financial officer;
3. Two or more directors;
4. A person authorized in the articles or bylaws to call special meetings; or
5. A shareholder or shareholders holding, ten percent or more of the voting power of all shares entitled to vote, except that a special meeting for the purpose of considering any action to directly or indirectly facilitate or effect a business combination, including any action to change or otherwise affect the composition of the board of directors for that purpose, must be called by 25 percent or more of the voting power of all shares entitled to vote.

Subdivision 2. Demand by shareholders. A shareholder or shareholders holding the voting power specified in subdivision 1, paragraph (e), may demand a special meeting of shareholders by written notice of demand giving notice to the chief executive officer or chief financial officer of the corporation and containing the purposes of the meeting. Within 30 days after receipt of the demand by one of those officers, the board shall cause a special meeting of shareholders to be called and held on notice not later than 90 days after receipt of the demand, all at the expense of the corporation. If the board fails to cause a special meeting to be called and held as required by this subdivision, the shareholder or shareholders making the demand may call the meeting by giving notice as required by Section 11-435, all at the expense of the corporation.

Subdivision 3. Time; place. Special meetings shall be held on the date and at the time and place fixed by the chief executive officer, the chief financial officer, the board, or a person authorized by the articles or bylaws to call a meeting, except that a special meeting called by or at the demand of a shareholder or shareholders pursuant to subdivision 2 shall be held on the Reservation.

Subdivision 4. Business limited. The business transacted at a special meeting is limited to the purposes stated in the notice of the meeting. Any business transacted at a special meeting that is not included in those stated purposes is voidable by or on behalf of the corporation, unless all of the shareholders have waived notice of the meeting, in accordance with Section 11-435, subdivision 4. [TCR 94-124]

11-435 Notice.

Subdivision 1. To Whom given. Except as otherwise provided in this Code, notice of all meetings of shareholders shall be given to every holder of shares entitled to vote, unless:

1. the meeting is an adjourned meeting and the date, time, and place of the meeting were announced at the time of adjournment; or
2. the following have been mailed by first class mail to a shareholder at the address in the corporate records and returned undeliverable:
   a. two consecutive annual meeting notices and notices of any special meetings held during the period between the two annual meetings; or
   b. all payments of dividends sent during a 12-month period, provided there are at least two sent during the 12 month period. An action or meeting that is taken or held without notice under clause (b) has the same force and effect as if notice was given. If the shareholder delivers a written notice of the shareholder's current address to the corporation, the notice requirement is reinstated.

Subdivision 2. When given. In all instances where a specific minimum notice period has not otherwise been fixed by law, the notice shall be given at least ten days before the date of the meeting, or a shorter time provided in the articles or bylaws, and not more than 60 days before the date of the meeting.

Subdivision 3. Contents. The notice shall contain the date, time, and place of the meeting, and any other information required by this Code. In the case of a special meeting, the notice shall contain a statement of the purposes of the meeting. The notice may also contain any other information required by the articles or bylaws or deemed necessary or desirable by the board or by any other person or persons calling the meeting.

Subdivision 4. Waiver, objections. A shareholder may waive notice of a meeting of shareholders. A waiver of notice by shareholder entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, orally, or by attendance. Attendance by a shareholder at a meeting is a waiver of notice of that meeting, except where the shareholder objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting.

11-436 Electronic communications.

Subdivision 1. Electronic conferences. If and to the extent authorized in the bylaws or by the board of a closely-held corporation, a conference among shareholders by any means of communication through which the shareholders may simultaneously hear each other during the conference constitutes a regular or special meeting of shareholders, if the same notice is given of the conference to every holder of shares entitled to vote as would be required by this Code for a meeting, and if the number of shares held by the shareholders participating in the conference would be sufficient to constitute a quorum at a meeting. Participation in a conference by that means constitutes presence at the meeting in person or by proxy if all the other requirements of Section 11-449 are met.

Subdivision 2. Participation in electronic means. If and to the extent authorized in the bylaws or by the board of a closely-held corporation, a shareholder may participate in a regular or special meeting of shareholders not described in subdivision 1 by any means of communication through which the shareholder, other shareholders so participating, and all shareholders physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by that means constitutes presence at the meeting in person or by proxy if all the other requirements of Section 11-449 are met.

Subdivision 3. Waiver. Waiver of notice of a meeting by means of communication described in subdivisions 1 and 2 may be given in the provided in Section 11-435, subdivision 4. Participation in a meeting by means of communication described in subdivisions 1 and 2 is a waiver of notice of that meeting, except where the shareholder objects at the beginning of the meeting to the transaction of business because is not lawfully called or convened, or objects before a vote on an item of business because the item may not be lawfully considered at the meeting and does not participate in the consideration of the item at the meeting. [TCR 94-124]

11-437 Act of the shareholders.

Subdivision 1. Majority required. The shareholders shall take action by the affirmative vote of the holders of the greater of (1) a majority of the voting power of the shares present and entitled to vote on that item of business, or (2) a majority of the voting power of the minimum number of the shares entitled to vote that would constitute a quorum for the transaction of business at the meeting, except where this Code or the articles require a larger proportion or number. If the articles require a larger proportion or number than is required by this Code for a particular action, the articles control.

Subdivision 2. Voting class. In any case where a class or series of shares is entitled by this Code, the articles, the bylaws, or the terms of the shares to vote as a class or series, the matter being voted upon must also receive the affirmative vote of the holders of the same proportion of the shares present of that class or series, or of the total outstanding shares of that class or series, as the proportion required pursuant to subdivision 1, unless the articles require a larger proportion. Unless otherwise stated in the articles or bylaws in the case of voting as a class, the minimum percentage of the total number of shares of the class or series which must be present shall be equal to the minimum percentage of all outstanding, shares entitled to vote required to be present under Section 11-443. [TCR 94-124]

11-441 Action without a meeting. An action required or permitted to be taken at a meeting of the shareholders may be taken without a meeting by written action signed by all of the shareholders entitled to vote on that action. The written action is effective when it has been signed by all of those shareholders, unless a different effective time is provided in the written action. [TCR 94-124]

11-443 Quorum. The holders of a majority of the voting power of the shares entitled to vote at a meeting are a quorum for the transaction of business, unless a larger or smaller proportion or number is provided in the articles or bylaws. If a quorum is present when a duly called or held meeting is convened, the shareholders present may continue to transact business until adjournment, even though the withdrawal of a number of shareholders originally present leaves less than the proportion or number otherwise required for a quorum. [TCR 94-124]

11-445 Voting rights.

Subdivision 1. Determination. The board may fix a date not more than 60 days, or a shorter time period provided in the articles or bylaws, before the date of a meeting of shareholders as the date for the determination of the holders of shares entitled to notice of and entitled to vote at the meeting. When a date is so fixed, only shareholders on that date are entitled to notice of and permitted to vote at that meeting of shareholders.

Subdivision 2. Certificate of beneficial owner. A resolution approved by the affirmative vote procedure whereby a shareholder may certify in writing to the corporation that all or a portion of the shares registered in the name of the shareholder are held for the account of one or more beneficial owners. Upon receipt by the corporation of the writing, the persons specified as beneficial owners, rather than the actual shareholder, are deemed the shareholders for the purposes specified in the writing.

Subdivision 3. One vote per share. Unless otherwise provided in the articles or in the terms of the shares, a shareholder has one vote for each share held.

Subdivision 4. Non-shareholders. The articles may give or prescribe the manner of giving a creditor, security holder, or other person a right to vote under this Section.

Subdivision 5. Jointly owned shares. Shares owned by two or more shareholders may be voted by any one of them unless the corporation gives written notice from any one of them denying the authority of that person to vote those shares.

Subdivision 6. Manner of voting; presumption. Except as provided in subdivision 5, a holder of shares entitled to vote any portion of the shares in any way the shareholder chooses. If a shareholder votes without designating the proportion or number of shares voted in a particular way, the shareholder is deemed to have voted all of the shares in that way. [TCR 94-124]

11-447 Voting of shares by organizations and legal representatives.

Subdivision 1. Shares held by other corporations. Shares of a corporation registered in the name of another tribal or foreign corporation be voted by the chief executive officer or another legal representative of that corporation.

Subdivision 2. Shares held by subsidiary. Except as provided in subdivision 3, shares of a corporation registered in the name of a subsidiary are not entitled to vote on any matter.

Subdivision 3. Shares controlled in fiduciary capacity. Shares of a corporation in the name of or under the control of, the corporation or subsidiary in a fiduciary capacity are not entitled to vote on any matter, except to the extent that the seller or beneficial owner possesses and exercises a right to vote or gives the corporation binding instructions on how to vote the shares.

Subdivision 4. Voting by certain representatives. Shares under the control of a person in a capacity as a personal representative, an administrator, executor, guardian, conservator, or attorney-in-fact may be voted by the person, in person or by proxy, without registration of those shares in the name of the person. Shares registered in the entire of a trustee of a trust or in the name of a custodian may be voted by the person, either in person or by proxy, but a trustee of a trust or a custodian shall not vote shares held by the person unless they are registered in the name of the person.

Subdivision 5. Voting by trustee in bankruptcy or receiver. Shares registered in the name of a trustee in bankruptcy or a receiver may be voted by the trustee or receiver either in person or by proxy. Shares under the control of a trustee in bankruptcy or a receiver may be voted by the trustee or receiver without registering the shares in the name of the trustee or receiver, if authority to do so is contained in an appropriate order of the Court by which trustee or receiver was appointed.

Subdivision 6. Shares held by other organizations. Shares registered in the name of an organization not described in subdivision 1 to 5 may be voted either in person or by proxy by the legal representative of that organization.

Subdivision 7. Pledge shares. A shareholder whose shares are pledged may vote those shares until the shares are registered in the name of the pledgee. If the corporation pledges its own shares under Section 11-553, subdivision 1, the corporation shall not be entitled to vote the shares at a meeting or otherwise. [TCR 94-124]

11-449 Proxies.

Subdivision 1. Authorization. A shareholder may cast or authorize the casting of a vote by filing a written appointment of a proxy with an officer of the corporation at or before the meeting at which the appointment is to be effective. A written appointment of a proxy may be signed by the shareholder or authorized by the shareholder by transmission of a telegram, cablegram, or other means of electronic transmission, provided that the telegram, cablegram, or other means of electronic transmission must set forth or be submitted with information from which it can be determined that the telegram, cablegram, or other electronic transmission was authorized by the shareholder. Any reproduction of the writing or transmission may be substituted or used in lieu of the original writing or transmission for any purpose for which the original transmission could be used, provided that the copy, facsimile telecommunications, or other reproduction is a complete and legible reproduction of the entire original writing or transmission. An appointment of a proxy for shares held jointly by two or more shareholders is valid if signed or otherwise authorized by any one of

them, unless the corporation receives from any one of those shareholders written notice either denying the authority of that person to appoint a proxy or appointing a different proxy.

Subdivision 2. Duration. The appointment of a proxy is valid for 11 months, unless a longer period is expressly provided in the appointment. No appointment is irrevocable unless the appointment is coupled with an interest in the shares or in the corporation.

Subdivision 3. Termination. An appointment may be terminated at will, unless the appointment is coupled with an interest, in which case it shall not be terminated except in accordance with the terms of the agreement, if any, between the parties to the appointment. Termination may be made by filing written notice of the termination of the appointment with an officer of the corporation, or by filing a new written appointment of a proxy with an officer of the corporation. Termination in either manner revokes all prior proxy appointments and is effective when filed with an officer of the corporation.

Subdivision 4. Revocation by death, incapacity. The death or incapacity of a person appointing a proxy does not revoke the authority of the proxy, unless written notice of the death or incapacity is received by an officer of the corporation before the proxy exercises the authority under that appointment.

Subdivision 5. Multiple proxies. Unless the appointment specifically provides otherwise, if two or more persons are appointed as proxies for a shareholder:

1. Any one of them may vote the shares on each item of business in accordance with specific instructions contained in the appointment; and
2. If no specific instructions are contained in the appointment with respect to voting the shares on a particular item of business, the shares shall be voted as a majority of the proxies determine. If the proxies are equally divided, the shares shall not be voted.

Subdivision 6. Vote of proxy accepted; liability. Unless the appointment of a proxy contains a restriction, limitation or specific reservation of authority, the corporation may accept a vote or action taken by a person named in the appointment. The vote of a proxy is final, binding and not subject to challenge, but the proxy is liable to the shareholder or beneficial owner for damages resulting from a failure to exercise the proxy or from an exercise of the proxy in violation of the authority granted in the appointment.

Subdivision 7. Limited authority. If a proxy is given authority by a shareholder to vote on less than all items of business of shareholders, the shareholder is considered to be present and entitled to vote by the proxy for purposes of Section 11-437, subdivision 1, only with respect to those items of business for which the proxy has authority to vote. A proxy who is given authority by a shareholder who abstains with respect to an item of business is considered to have authority to vote on the item of business for purposes of this subdivision. [TCR 94-124]

11-453 Voting trusts.

Subdivision 1. Authorization; period; termination. Shares in a corporation may be transferred to a trustee pursuant to written agreement, for the purpose of conferring on the trustee the right to vote and otherwise represent the beneficial owner of those shares for a period not exceeding 15 years, except that if the agreement is made in connection with an indebtedness of the corporation, the voting trust may extend until the indebtedness is discharged. Unless otherwise specified in the agreement, the voting trust may be terminated at any time by the beneficial owners of a majority of the voting power of the shares held by the trustee. A copy of the agreement shall be filed with the corporation.

Subdivision 2. Voting by trustee. Unless otherwise provided in the trust agreement, if there are two or more trustees, the manner of voting is determined as provided in Section 11-445, subdivision 5. [TCR 94-124]

11-455 Shareholder voting agreements. A written agreement among persons who are then shareholders or subscribers for shares to be issued, relating to the voting of their shares, is valid and specifically enforceable by and against the parties to the agreement. The agreement may override provisions of Section 11-449 regarding proxies and is not subject to the revisions of Section 11-453 regarding voting trusts. [TCR 94-124]

11-457 Shareholder control agreements.

Subdivision 1. Authorized. A written agreement among the shareholders of a corporation and the subscribers for shares to be issued, relating to the control of any phase of the business and affairs of the corporation, its liquidation and dissolution, or relations among shareholders of or subscribers to shares of the corporation is valid and specifically as provided in subdivision 2.

Subdivision 2. Method of approval; enforceability; copies.

1. A written agreement among persons described in subdivision 1 that relates to the control of or the liquidation and dissolution of the corporation, the relations among them or any phase of the business and affairs of the corporation, including, without limitation, directors or officers, the employment of shareholders by the corporation, or the arbitration of disputes**,** is valid and specifically enforceable, if the agreement is signed by all persons who are then the shareholders of the corporation, whether or not the shareholders all have voting shares, and the subscribers for shares, whether or not voting shares, to be issued.
2. The agreement is enforceable by the persons described in subdivision 1 who are parties to it and is binding upon and enforceable against only those persons and other persons having knowledge of the existence of the agreement. A copy of the agreement shall be filed with the corporation. The existence and location of a copy of the agreement shall be noted conspicuously on the face or back of each certificate for shares issued by the corporation and on each transaction statement.
3. A shareholder, a beneficial owner of shares, or another person having a security interest in shares has the right upon written demand to obtain a copy of the agreement from the corporation at the expense of the corporation.

Subdivision 3. Liability. The effect of an agreement authorized by this Section is to relieve the board and the director or directors in their capacities as directors of, and to impose upon the parties to the agreement, the liability for acts and omissions imposed by law upon directors to the extent that and so long as the discretion or powers of the director in management of the business and affairs of the corporation are exercised by the directors under a provision in the agreement. A shareholder is not liable pursuant to this subdivision by virtue of a shareholder vote, if the shareholder had no right to vote on the action.

Subdivision 4. Other agreements. This Section does not apply to, limit, or restrict agreements otherwise valid, nor is the procedure set forth in this Section the exclusive method of agreement among shareholders or between the shareholders and the corporation with respect to any of the matters described in this Section. [TCR 94-124]

11-461 Books and records; inspection.

Subdivision 1. Share register, dates of issuance.

1. A corporation shall keep at its principal executive office, or at another place or places within the United States determined by the board, a share register not more than one year old, containing the names and addresses of the shareholders and the number and classes of shares held by each shareholder.
2. A corporation shall also keep, at its principal executive office, or at another place or places within the United States determined by the board, a record of the date on which certificates or transaction statements representing shares were issued.

Subdivision 2. Other documents required. A corporation shall keep at its principal executive office, or, if its principal executive office is outside the reservation, shall make available at its registered office within ten days after receipt by an officer of the corporation of a written demand for them made by a person described in subdivision 4, originals or copies of:

1. Records of proceedings of shareholders for the last three years;
2. Records of all proceedings of the board for the last three years;
3. Its articles and all amendments currently in effect;
4. Its bylaws and all amendments currently in effect;
5. Financial statements required by Section 11-463 and the financial statement for the most recent interim period prepared in the course of the operation of the corporation for distribution to the shareholders or to a governmental agency as a matter of public record;
6. Reports made to shareholders generally within the last three years;
7. A statement of the names and usual business addresses of its directors and principal officers;
8. Voting trust agreements described in Section 11-453;
9. Shareholder control agreements described in Section 11-457; and
10. A copy of agreements, contracts, or arrangements or portions of them incorporated by reference under Section 11-401, subdivision 3.

Subdivision 3. Financial records. A corporation shall keep appropriate and complete financial records.

Subdivision 4. Right to inspect.

1. A shareholder, beneficial owner, or a holder of a voting trust certificate of a corporation that is not a publicly-held corporation has an absolute right, upon written demand, to examine and copy, in person or by a legal representative, at any reasonable time:
   a. The share register; and
   b. All documents referred to in subdivision 2.
2. A shareholder, beneficial owner, or a holder of a voting trust certificate of a corporation that is not a publicly-held corporation has a right upon written demand, to examine and copy, in person or by a legal representative other corporate records at any reasonable time only if the shareholder beneficial owner, or holder of a voting trust certificate demonstrates a proper purpose for the examination.
3. A shareholder, beneficiary or a holder of a voting trust certificate of a publicly-held corporation has, upon written demand stating the purpose and acknowledged before the Tribal Secretary, a right at any reasonable time to examine and copy the corporation's share register and other corporate records reasonably related to the stated purpose and described with reasonable

particularity in the written demand upon demonstrating the stated purpose to be a proper purpose. The acknowledged or verified demand must be directed to the corporation at its registered office on the Reservation or at its principal place of business.

4. For purposes of this Section, a proper purpose is one reasonably related to the personal interest as a shareholder, beneficial owner, or holder of a voting trust certificate of the corporation.

Subdivision 5. Protective orders. On application of the corporation, the Court may issue a protective order permitting the corporation to withhold portions of the records of proceedings of the board for a reasonable period of time, not to exceed 12 months, in order to prevent premature disclosure of confidential information which would be likely to cause competitive injury to the corporation. A protective order may be renewed for successive reasonable periods of time, each not to exceed 12 months and in total not to exceed 36 months, for good cause shown. In the event a protective order is issued, the statute of limitations for any action which the shareholder, beneficial owner, or holder of a voting trust certificate might bring as a result of information withheld automatically extends for the period of delay. If the Court does not issue a protective order with respect to any portion of the records of proceedings as requested by the corporation, it shall award reasonable expenses, including attorney's fees and disbursements, to the shareholder, beneficial owner, or holder of a voting trust certificate. This subdivision does not limit the right of the Court to grant other protective orders or impose other reasonable restrictions on the nature of the corporate records that may be copied or examined under subdivision 4 or the use or distribution of the records by the demanding shareholder, beneficial owner, or holder of a voting trust certificate.

Subdivision 6. Other use prohibited. A shareholder, beneficial owner, or holder of a voting trust certificate who has gained access under this Section to any corporate record including the share register may not use or furnish to another for use the corporate record or a portion of the contents for any purpose other than a proper purpose. Upon application of the corporation, the Court may issue a protective order or order other relief as may be necessary to enforce the provisions of this subdivision.

Subdivision 7. Cost of copies. Copies of the share register and all documents referred to in subdivision 2, if required to be furnished under this Section, shall be furnished at the expense of the corporation. In all other cases, the corporation may charge the requesting party a reasonable fee to cover the expenses of providing the copy.

Subdivision 8. Computerized records. The records maintained by a corporation, including its share register, financial records, and minute books, may utilize any information storage technique, including, for example, punched holes, printed or magnetized spots, or micro-images, even though that makes them illegible visually, if the records can be converted accurately and within a reasonable time, into a form that is legible visually and whose contents are assembled by related subject matter to permit convenient use by people in the normal course of business. A corporation shall convert any of the records referred to in subdivision 4 upon the request of a person entitled to inspect them, and the expense of the conversion shall be borne by the person who bears the expense of copying pursuant to subdivision 7. Copy of the conversion is admissible in evidence, and shall be accepted for all other purposes, to the same extent as the existing or original records would be if they were legible visually. [TCR 94-124]

11-463 Financial statements. A corporation shall, upon written request by a shareholder, furnish annual financial statements, including at least a balance sheet as of the end of each fiscal year and a statement of income for the fiscal year, which shall be prepared on the basis of accounting methods reasonable in the circumstances and may be consolidated statements of the corporation and one or more of its subsidiaries. in the case of statements audited by a public accountant, each copy shall be accompanied by a report setting forth the opinion of the accountant on the statements; in other cases, each copy shall be

accompanied by a statement of the chief financial officer or other person in charge of the corporation's financial records stating the reasonable belief of the person that the financial statements were prepared in accordance with accounting methods reasonable in the circumstances, describing the basis of presentation, and describing any respects in which the financial statements were not prepared on a basis consistent with those prepared for the previous year. [TCR 94-124]

11-467 Equitable remedies. If a corporation or an officer or director of the corporation violates a provision of this Code, the Court may, in an action brought by a shareholder of the corporation, grant any equitable relief it deems just and reasonable in the circumstances and award expenses, including attorney's fees and disbursements, to the shareholder. [TCR 94-124]

11-471 Rights of dissenting shareholders.

Subdivision 1. Actions creating rights. A shareholder of a corporation may dissent from, and obtain payment for the fair value of the shareholder's shares in the event of, any of the following corporate actions:

1. An amendment of the articles that materially and adversely affects the rights or preferences of the shares of the dissenting shareholder in that it:
   a. alters or abolishes a preferential right of the shares;
   b. creates, alters, or abolishes a right in respect of the redemption of the shares, including a provision respecting a sinking fund for the redemption or repurchase of the shares;
   c. alters or abolishes a preemptive right of the holder of the shares to acquire shares, securities other than shares, or rights to purchase shares or securities other than shares;
   d. excludes or limits the right of a shareholder to vote on a matter, or to cumulate votes, except as the right may be excluded or limited through the authorization or issuance of securities of an existing or new class or series with similar or different voting rights;
2. A sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the corporation not made in the usual or regular course of its business, but not including a disposition in dissolution described in Section 11-729, subdivision 2, or a disposition pursuant to an order of a court, or a disposition for cash on terms requiring that all or substantially all of the net proceeds of disposition be distributed to the shareholders in accordance with their respective interests within one year after the date of disposition;
3. A plan of merger, whether or not under this Code, to which the corporation is a party, except as provided in subdivision 3;
4. A plan of exchange, whether or not under this Code, to which the corporation is a party as the corporation whose shares will be acquired by the acquiring corporation, if the shares of the shareholder are entitled to be voted on the plan; or
5. Any other corporate action taken pursuant to a shareholder vote with respect to which the articles, the bylaws, or a resolution approved by the board directs that dissenting shareholders may obtain payment for their shares.

Subdivision 2. Beneficial owners.

1. A shareholder shall not assert dissenter's rights as to less than all of the share in the name of the shareholder, unless the shareholder dissents with respect to all the shares that are beneficially owned by another person but registered in the name of the shareholder and discloses the name and address of each beneficial owner on whose behalf the shareholder dissents. In that event, the rights

of the dissenter shall be determined as if the shares as to which the shareholder has dissented and the other shares were registered in the names of different shareholders.

2. A beneficial owner of shares who is not the shareholder may assert dissenter's rights with respect to shares held on behalf of the beneficial owner, and shall be treated as a dissenting shareholder under the terms of this Section and Section 11-473, if the beneficial owner submits to the corporation at the time of or before the assertion of the rights a written consent of the shareholder.

Subdivision 3. Rights not to apply. The right to obtain payment under this Section does not apply to a shareholder of the surviving corporation in a merger, if the shares of the shareholder are not entitled to be voted on the merger.

Subdivision 4. Other rights. The shareholders of a corporation who have a right under this Section to obtain payment for their shares do not have a right at law or in equity to have a corporate action described in subdivision 1 set aside or rescinded, except when the corporate action is fraudulent with regard to the complaining shareholder or the corporation. [TCR 94-124]

11-473 Procedures for asserting dissenter's rights.

Subdivision 1. Definitions.

1. For purposes of this Section, the terms defined in this subdivision have the meanings given them.
2. "Corporation" means the issuer of the shares held by a dissenter before the corporate action referred to in Section 11-471, subdivision 1 or the successor by merger of that issuer.
3. "Fair value of the shares" means the value of the shares of a corporation immediately before the effective date of the corporate action referred to in Section 11-471, subdivision 1.
4. "Interest" means interest commencing five days after the effective date of the corporate action referred to in Section 11-471, subdivision 1, up to and including the date of payment, calculated at the rate provided by the laws of the Tribe for interest on verdicts and judgments, or if the laws of the Tribe do not establish a rate, then at the rate provided by the laws of the State of Nebraska for interest on verdicts and judgments.

Subdivision 2. Notice of action. If a corporation calls a shareholder meeting at which any action described in Section 11-471, subdivision 1 is to be voted upon, the notice of the meeting shall inform each shareholder of the right to dissent and shall include a copy of Section 11-471 and this Section and a brief description of the procedure to be followed under these sections.

Subdivision 3. Notice of dissent. If the proposed action must be approved by the shareholders, a shareholder who wishes to exercise dissenter's rights must file with the corporation before the vote on the proposed action a written notice of intent to demand the fair value of the shares owned by the shareholder and must not vote the shares in favor of the proposed action.

Subdivision 4. Notice of procedure; deposit of shares.

1. After the proposed action has been approved by the board and, if necessary, the shareholders, the corporation shall send to all shareholders who have complied with subdivisions and to all shareholders entitled to dissent if no shareholder vote was required, a notice that contains:
   a. The address to which a demand for payment and certificates of certificated shares must be sent in order to obtain payment and the date by which they must be received;

b. Any restrictions on transfer of uncertificated shares that will apply after the demand for payment is received;

c. A form to be used to certify the date on which the shareholder, or the beneficial owner on whose behalf the shareholder dissents, acquired the shares or an interest in them and to demand payment; and

d. A copy of Section 11-471 and this Section and a brief description of the procedures to be followed under these sections.

2. In order to receive the fair value of the shares, a dissenting shareholder must demand payment and deposit certificated shares or comply with any restrictions on transfer of uncertificated shares within 30 days after the notice was given, but the dissenter retains all other rights of a shareholder until the proposed action takes effect.

Subdivision 5. Payment; return of shares.

1. After the corporate action takes effect, or after the corporation receives a valid demand for payment, whichever is later, the corporation shall remit to each dissenting shareholder who has complied with subdivisions 3 and 4 the amount the corporation estimates to be the fair value of the shares, plus interest, accompanied by:

   a. the corporation's closing balance sheet and statement of income for a fiscal year ending not more than 16 months before the effective date of the corporate action, together with the latest available interim financial statements;

   b. an estimate by the corporation of the fair value of the shares and a brief description of the method used to reach the estimate; and

   c. a copy of Section 11-471 and this Section, and a brief description of the procedure to be followed in demanding supplemental payment.

2. The corporation may withhold the remittance described in paragraph (a) from a person who was not a shareholder on the date the action dissented from was first announced to the public or who is dissenting on behalf of a person who was not a beneficial owner on that date. If the dissenter has complied with subdivisions 3 and 4, the corporation shall forward to the dissenter the materials described in paragraph (a), a statement of the reason for withholding the remittance, and an offer to pay to the dissenter the amount listed in the materials if the dissenter agrees to accept that amount in full satisfaction. The dissenter may decline the offer and demand payment under subdivision 6. Failure to do so entitles the dissenter only to the amount offered. If the dissenter makes demand, subdivisions 7 and 8 apply.

3. If the corporation fails to remit payment within 60 days of the deposit of certificates or the imposition of transfer restrictions on uncertificated shares, it shall return all deposited certificates and cancel all transfer restrictions. However, the corporation may again give notice under subdivision 4 and require deposit or restrict transfer at a later time.

Subdivision 6. Supplemental payment; demand. If a dissenter believes that the amount remitted under subdivision 5 is less than the fair value of the shares plus interest, the dissenter may give written notice to the corporation of the dissenter's own estimate of the fair value of the shares, plus interest, within 30 days after the corporation mails the remittance under subdivision 5, and demand payment of the difference. Otherwise, a dissenter is entitled only to the amount remitted by the corporation.

Subdivision 7. Petition; determination. If the corporation receives a demand under subdivision 6, it shall, within 60 days after receiving the demand, either pay to the dissenter the amount demanded or agreed to by the dissenter after discussion with the corporation or file in Court a petition requesting that the Court determine the fair value of the shares, plus interest. The petition shall name as parties all dissenters who

have demanded payment under subdivision 6 and who have not reached agreement with the corporation. The jurisdiction of the Court is plenary and exclusive. The Court may appoint appraisers, with powers and authorities the Court deems proper, to receive evidence on and recommend the amount of the fair value of the shares. The Court shall determine whether the shareholder or shareholders in question have fully complied with the requirements of this Section, and shall determine the fair value of the shares, taking into account any and all factors the Court finds relevant, computed by any method or combination of methods that the Court, in its discretion sees fit to use, whether or not used by the corporation or by a dissenter. The fair value of the shares as determined by the Court is binding on all shareholders, wherever located. A dissenter is entitled to judgment for the amount by which the fair value of the shares as determined by the Court, plus interest, exceeds the amount, if any, remitted under subdivision 5, but shall not be liable to the corporation for the amount, if any, by which the amount, if any, remitted to the dissenter under subdivision 5 exceeds the fair value of the shares as determined by the Court, plus interest.

Subdivision 8. Costs; fees; expenses.

1. The Court shall determine the costs and expenses of a proceeding under subdivision 7, including the reasonable expenses and compensation of any appraisers appointed by the Court, and shall assess those costs and expenses against the corporation, except that the Court may assess part or all of those costs and expenses against a dissenter whose action in demanding payment under subdivision 6 is found to be arbitrary, vexatious, or not in good faith.
2. If the Court finds that the corporation has failed to comply substantially with this Section, the Court may assess all fees and expenses of any experts or attorneys as the Court deems equitable. These fees and expenses may also be assessed against a person who has acted arbitrarily, vexatiously, or not in good faith in bringing the proceeding, and may be awarded to a party injured by those actions.
3. The Court may award, in its discretion, fees and expenses to an attorney for the dissenters out of the amount awarded to the dissenters, if any. [TCR 94-124]

TITLE 11
ARTICLE 5
LOANS; OBLIGATIONS; DISTRIBUTIONS

11-501 Loans; guarantees; suretyship.
11-505 Advances.
11-521 Indemnification.
11-551 Distributions.
11-553 Powers to acquire shares.
11-557 Liability of shareholders for illegal distributions.
11-559 Liability of directors for illegal distributions.

11-501 Loans; guarantees; suretyship.

Subdivision 1. Prerequisites. A corporation may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist a person, if the transaction, or a class of transactions to which the transaction belongs, is approved by the affirmative vote of a majority of the directors present and:

a. Is in the usual and regular course of business of the corporation;
b. Is with, or for the benefit of, a related corporation, an organization in which the corporation has a financial interest, an organization with which the corporation has a business relationship, or an organization to which the corporation has the power to make donations;
c. Is with, or for the benefit of, an officer or other employee of the corporation or a subsidiary, including an officer or employee who is a director of the corporation or a subsidiary, and may reasonably be expected, in the judgment of the board, to benefit the corporation; or
d. Has been approved by:
    1. the holders of two-thirds of the voting power of the shares entitled to vote which are owned by persons other than the interested person or persons, or
    2. the unanimous affirmative vote of the holders of all outstanding shares, whether or not entitled to vote.

Subdivision 2. Interest; security. A loan, guaranty, surety contract, or other financial assistance under subdivision 1 may be with or without interest and may be unsecured or may be secured in any manner, including, without limitation, a grant of a security interest in shares of the corporation.

Subdivision 3. Banking authority not granted. This Section does not grant any authority to act as a bank or to carry on the business of banking. [TCR 94-124]

11-505 Advances. A corporation may, without a vote of the directors, advance money to its directors, officers, or employees to cover expenses that can reasonably be anticipated to be incurred by them in the performance of their duties and for which they would be entitled to reimbursement in the absence of an advance. [TCR 94-124]

11-521 Indemnification.

Subdivision 1. Definitions.

a. For purposes of this Section, the terms defined in this subdivision have the meanings given them.

b. "Corporation" includes a Tribal or foreign corporation that was the predecessor of the corporation referred to in this Section in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

c. "Official capacity" means (1) with respect to a director, the position of director in a corporation, (2) with respect to a person other than a director, the elective or appointive office or position held by an officer, member of a committee of the board, or the employment relationship undertaken by an employee of the corporation, and (3) with respect to a director, officer, or employee of the corporation who, while a director, officer, or employee of the corporation, is or was serving at the request of the corporation or whose duties in that position involve or involved service as a director, officer, partner, trustee, employee, or agent of another organization or employee benefit plan, the position of that person as a director, officer, partner, trustee, employee, or agent, as the case may be, of the other organization or employee benefit plan.

d. "Proceeding" means a threatened, pending, or completed civil, criminal, administrative, arbitration, or investigative proceeding, including a proceeding by or in the right of the corporation.

e. "Special legal counsel" means counsel who has not represented the corporation or a related corporation, or a director, officer, member of a committee of the board, or employee, whose indemnification is in issue.

Subdivision 2. Indemnification mandatory; standard.

a. Subject to the provisions of subdivision 4, a corporation shall indemnify a person made or threatened to be made a party to a proceeding by reason of the former or present official capacity of the person against judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorney's fees and disbursements, incurred by the person in connection with the proceeding, if, with respect to the acts or omissions of the person complained of in the proceeding, the person:

1. Has not been indemnified by another organization or employee benefit plan for the same judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorney's fees and disbursements, incurred by the person in connection with the proceeding with respect to the same acts or omissions;
2. Acted in good faith;
3. Received no improper personal benefit and Section 11-255, if applicable, has been satisfied;
4. In the case of a criminal proceeding, had no reasonable cause to believe the conduct was unlawful; and
5. In the case of acts or omissions occurring in the official capacity described in subdivision 1, paragraph (c), clause (1) or (2), reasonably believed that the conduct was in the best interests of the corporation, or in the case of acts or omissions occurring in the official capacity described in subdivision 1, paragraph (c), clause (3), reasonably believed that the conduct was not opposed to the best interests of the corporation. If the person's acts or omissions complained of in the proceeding relate to conduct as a director, officer, trustee, employee, or agent of an employee benefit plan, the conduct is not considered to be opposed to the best interests of the corporation if the person reasonably believed that the conduct was in the best interests of the participants or beneficiaries of the employee benefit plan.

b. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent does not, of itself, establish that the person did not meet the criteria set forth in this subdivision.

Subdivision 3. Advances. Subject to the provisions of subdivision 4, if a person is made or threatened to be made a party to a proceeding the person is entitled, upon written request to the corporation, to payment or reimbursement by the corporation of reasonable expenses, including attorney's fees and disbursements, incurred by the person in advance of the final disposition of the proceeding (a) upon receipt by the corporation of a written affirmation by the person of a good faith belief that the criteria for indemnification set forth in subdivision 2 have been satisfied and a written repay all amounts so paid or reimbursed by the corporation, if the criteria for indemnification have not been satisfied, and (b) after a of the facts then known to those making the determination would not preclude indemnification under this Section. The written undertaking required by clause (a) is an unlimited general obligation of the person making it, but need not be secured and shall be accepted without reference to financial ability to make the repayment.

Subdivision 4. Prohibition or limit on indemnification or advances. The articles or bylaws either may prohibit indemnification or advances of expenses otherwise required by this Section or may impose conditions on indemnification or advances of expenses in addition to the conditions contained in subdivisions 2 and 3 including, without limitation, monetary limits on indemnification or advances of expenses, if the conditions apply equally to all persons or to persons within a given class. A prohibition or limit on indemnification or advances may not apply to or affect the right of a person to indemnification or advances of expenses with respect to any acts or omissions of the person occurring prior to the effective date of a provision in the articles or the date of adoption of a provision in the bylaws establishing the prohibition or limit on indemnification or advances.

Subdivision 5. Reimbursement to witnesses. This Section does not require, or limit the ability of, a corporation to reimburse expenses, including attorney's fees and disbursements, incurred by a person in connection with an appearance as a witness in a proceeding at a time when the person has not been made or threatened to be made a party to a proceeding.

Subdivision 6. Determination of eligibility.

a. All determinations of whether indemnification of a person is required because the criteria set forth in subdivision 2 have been satisfied and whether a person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subdivision 3 shall be made:

1. By the board by a majority of a quorum; directors who are at the time parties to the proceeding shall not be counted for determining either a majority or the presence of a quorum;
2. If a quorum under clause (1) cannot be obtained, by a majority of a committee of the board, consisting solely of two or more directors not at the time parties to the proceeding duly designated to act in the matter by a majority of the full board including directors who are parties;
3. If a determination is not made under clause (1) or (2), by special legal counsel, selected either by a majority of the board or a committee by vote pursuant to clause (1) or (2) or, if the requisite quorum of the full board cannot be obtained and the committee cannot be established, by a majority of the full board including directors who are parties;
4, If a determination is not made under clauses (1) to (3), by the shareholders, excluding the votes of shares held by parties to the proceeding; or

5. If an adverse determination is made under clauses (1) to (4) or under paragraph (b), or if no determination is made under clauses (1) to (4) or under paragraph (b) within 60 days after (i) the later to occur of the termination of a proceeding or a written request for indemnification to the corporation or (ii) a written request for an advance of expenses, as the case may be, by the Court, which may be the same Court in which the proceeding involving the personas liability took place, upon application of the person and any notice the Court requires. The person seeking indemnification or payment or reimbursement of expenses pursuant to this clause has the burden of establishing that the person is entitled to indemnification or payment or reimbursement of expenses.

b. With respect to a person who is not, and was not at the time of the acts or omissions complained of in the proceedings, a director, officer, or person possessing, directly or indirectly, the power to direct or cause the direction of the management or policies of the corporation, the determination whether indemnification of this person is required because the criteria set forth in subdivision 2 have been satisfied and whether this person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subdivision 3 may be made by an annually appointed committee of the board, having at least one member who is a director. The committee shall report at least annually to the board concerning its actions.

Subdivision 7. Insurance. A corporation may purchase and maintain insurance on behalf of a person in that person's official capacity against any liability asserted against and incurred by the person in or arising from that capacity, whether or not the corporation would have been required to indemnify the person against the liability under the provisions of this Section.

Subdivision 8. Disclosure. A corporation that indemnifies or advances expenses to a person in accordance with this Section in connection with a proceeding by or on behalf of the corporation shall report to the shareholders in writing the amount of the indemnification or advance and to whom and on whose behalf it was paid not later than the next meeting of shareholders.

Subdivision 9. Indemnification of other persons. Nothing in this Section shall be construed to limit the power of the corporation to indemnify other persons by contract or otherwise. [TCR 94-124]

11-551 Distributions.

Subdivision 1. When permitted. The board may authorize and cause the corporation to make a distribution only if the board determines, in accordance with subdivision 2, that the corporation will be able to pay its debts in the ordinary course of business after making the distribution and the board does not know before the distribution is made that the determination was or has become erroneous, and the corporation may make the distribution if it is able to pay its debts in the ordinary course of business after making the distribution. The effect of a distribution on the ability of the corporation to pay its debts in the ordinary course of business after making the distribution shall be measured in accordance with subdivision 3. The right of the board to authorize, and the corporation to make, distributions may be prohibited, limited, or restricted by or the rights and priorities of persons to receive distributions may be established by, the articles or bylaws or an agreement.

Subdivision 2. Determination presumed proper. A determination that the corporation will be able to pay its debts in the ordinary course of business after the distribution is presumed to be proper if the determination is made in compliance with the standard of conduct provided in Section 11-251 on the basis of financial information prepared in accordance with accounting methods, or a fair valuation or other

method, reasonable in the circumstances. No liability under Section 11-251 or 11-559 will accrue if the requirements of this subdivision have been met.

Subdivision 3. Effect measured.

a. In the case of a distribution made by a corporation in connection with a purchase, redemption, or other acquisition of its shares, the effect of the distribution shall be measured as of the date on which money or other property is transferred, or indebtedness payable in installments or otherwise is incurred, by the corporation, or as of the date on which the shareholder ceases to be a shareholder of the corporation with respect to the shares, whichever is the earliest.

b. The effect of any other distribution shall be measured as of the date of its authorization if payment occurs 120 days or less following the date of authorization or as of the date of payment if payment occurs more than 120 days following the date of authorization.

c. Indebtedness of a corporation incurred or issued in a distribution in accordance with this Section to a shareholder who as a result of the transaction is no longer a shareholder is on a parity with the indebtedness of the corporation to its general unsecured creditors, except to the extent subordinated, agreed to, or secured by a pledge of any assets of the corporation or a related corporation, or subject to any other agreement between the corporation and the shareholder.

d. Sections 11-551 to 11-559 supersede all other laws of the Tribe with respect to distributions.

Subdivision 4. Restrictions.

a. A distribution may be made to the holders of a class or series of shares only if:

1. All amounts payable to the holders of shares having a preference for the payment of that kind of distribution, other than those holders who give notice to the corporation of their agreement to waive their rights to that payment, are paid; and

2. The payment of the distribution does not reduce the remaining net assets of the corporation below the aggregate preferential amount payable in the event of liquidation to the holders of shares having preferential rights, unless the distribution is made to those shareholders in the order and to the extent of their respective priorities or the holders of shares who do not receive distributions in that order give notice to the corporation of their agreement to waive their rights to that distribution. A determination that the payment of the distribution does not reduce the remaining net assets of the corporation below the aggregate preferential amount payable in the event of liquidation to the holders of shares having preferential rights is presumed to be proper if the determination is made in compliance with the standard of conduct provided in Section 11-251 on the basis of financial information prepared in accordance with accounting methods, or a fair valuation, or other methods, reasonable in the circumstances. Liability under Section 11-251 or 11-559 will not arise if the requirements of this paragraph are met.

b. If the money or property available for distribution is insufficient to satisfy all preferences, the distributions shall be made pro-rata according to the order of priority of preferences by classes and by series within those classes unless those holders who do not receive distributions in that order give notice to the corporation of their agreement to waive their rights to that distribution. [TCR 94-124]

11-553 Powers to acquire shares.

Subdivision 1. When permitted; status of shares. A corporation may acquire its own shares, subject to Section 11-551 and subdivision 3. If the corporation pledges the shares to secure payment of the

redemption price thereof, then the corporation shall not be deemed to have acquired the shares for the purposes of this subdivision until the pledge is released. Shares acquired by a corporation constitute authorized but unissued shares of the corporation, unless the articles provide that they shall not be reissued, in which case the number of authorized shares is reduced by the number of shares acquired.

Subdivision 2. Statement of cancellation. If the number of authorized shares of a corporation is reduced by an acquisition of its shares, the corporation shall, no later than the time it makes its next annual report to shareholders or, if no report is made, no later than three months after the end of the fiscal year in which the acquisition occurs, file with the Tribal Secretary a statement of cancellation showing the reduction in the authorized shares. The statement shall contain:

1. The name of the corporation;
2. The number of acquired shares canceled, itemized by classes and series; and
3. The aggregate number of authorized shares itemized by classes and series, after giving effect to the cancellation.

Subdivision 3. Limitation on share purchases. A publicly-held corporation shall not, directly or indirectly, purchase or agree to purchase any shares entitled to vote from a person (or two or more persons who act as a partnership, limited partnership, syndicate, or other group pursuant to any written or oral agreement, arrangement, relationship, understanding, or otherwise for the purpose of acquiring, owning, or voting shares of the publicly-held corporation) who beneficially owns more than five percent of the voting power of the publicly-held corporation for more than the market value thereof if the shares have been beneficially owned by the person for less than two years, unless the purchase or agreement to purchase is approved at a meeting of shareholders by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote or the publicly-held corporation makes an offer, of at least equal value per share, to all holders of shares of the class or series and to all holders of any class or series into which the securities may be converted. For purposes of determining the period that shares have been beneficially owned by a person:

1. Shares acquired by the person by gift from a donor are deemed to have first become beneficially owned by the person when the shares were acquired by the donor;
2. Shares acquired by a trust from the settlor of the trust, or shares acquired from the trust by a beneficiary of the trust, are deemed to have first become beneficially owned by the trust or the beneficiary when the shares were acquired by the settlor; and
3. Shares acquired by an estate or personal representative as a result of the death or incapacity of a person, or shares acquired from the estate or personal representative by an heir, devisee, or beneficiary of the deceased or incapacitated person, are deemed to have first become beneficially owned by the estate, personal representative, heir, devisee, or beneficiary when the shares were acquired by the deceased or incapacitated person. [TCR 94-124]

11-557 Liability of shareholders for illegal distributions.

Subdivision 1. Liability. A shareholder who receives a distribution made in violation of the provisions of Section 11-551 is liable to the corporation, its receiver or other person winding up its affairs, or a director under Section 11-559, subdivision 2, but only to the extent that the distribution received by the shareholder exceeded the amount that properly could have been paid under Section 11-551.

Subdivision 2. Statute of limitations. An action shall not be commenced under this Section more than two years from the date of the dissolution. [TCR 94-124]

11-559 Liability of directors for illegal distributions.

Subdivision 1. Liability. In addition to any other liabilities, a director who is present at a meeting and fails to vote against, or who consents in writing to, a distribution made in violation of Section 11-551 or a restriction contained in the articles or bylaws or an agreement, and who fails to comply with the standard of conduct provided in Section 11-251, is liable to the corporation jointly and severally with all other directors so liable and to other directors under subdivision 3, but only to the extent that the distribution exceeded the amount that properly could have been paid under Section 11-551.

Subdivision 2. Contribution from shareholders. A director against whom an action is brought under this Section with respect to a distribution may implead in that action all shareholders who received the distribution and may compel pro-rata contribution from them in that action to the extent provided in Section 11-557, subdivision 1.

Subdivision 3. Impleader, contribution from directors. A director against whom an action is brought under this Section with respect to a distribution may implead in that action all other directors who voted for or consented in writing to the distribution and may compel pro-rata contribution from them in that action.

Subdivision 4. Statute of limitations. An action shall not be commenced under this Section more than two years from the date of the distribution. [TCR 94-124]

TITLE 11
ARTICLE 6
MERGER, EXCHANGE, TRANSFER
(As Revised March 30, 2015)

11-600 Definitions
11-601 Merger, exchange, transfer.
11-611 Plan of merger or exchange.
11-613 Plan approval.
11-615 Articles of merger or exchange; certificate.
11-621 Merger of subsidiary.
11-631 Abandonment.
11-641 Effective date of merger or exchange; effect.
11-651 Merger or exchange with foreign corporation.
11-661 Transfer of assets; when permitted.

11-600 Definitions.

Subdivision 1. Business Entity. "Business Entity" in this Article means a domestic business entity and a foreign business entity.

Subdivision 2. Domestic Business Entity. "Domestic business entity" means a corporation, organized under this Code; a domestic limited liability company, organized under the laws of the Winnebago Tribe of Nebraska; a tribally-chartered entity of the Tribe, an unincorporated cooperative of the Tribe; a Section 17 Corporation owned by the Tribe; or other tribally-formed entity.

Subdivision 3. Foreign Business Entity. "Foreign business entity" means a foreign corporation; a foreign limited liability company; or a foreign limited partnership. [TCR 15-68]

11-601 Merger, exchange, transfer.

Subdivision 1. Merger. Any one or more corporations may merge with one or more business entities, resulting in a single corporation, with or without a business purpose, pursuant to a plan of merger approved in the manner provided in Sections 11-611 to 11-651.

Subdivision 2. Exchange. A corporation may acquire all of the outstanding shares of one or more classes or series of another corporation or business entity pursuant to a plan of exchange approved in the manner provided in Sections 11-611 to 11-615, and 11-631 to 11-651.

Subdivision 3. Transfer. A corporation may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the manner provided in Section 11-661.

Subdivision 4. Reserved. [TCR 94-124, 15-68]

11-611 Plan of merger or exchange.

Subdivision 1. Contents of plan. A plan of merger or exchange shall contain:

a. The names of the business entities proposing to merge or participate in an exchange, and:
   1. in the case of a merger, the name of the surviving corporation;
   2. in the case of an exchange, the name of the acquiring corporation;

b. The terms and conditions of the proposed merger or exchange;

1. In the case of a merger, the manner and basis of converting the shares of the constituent business entities into securities of the surviving corporation or of any other corporation, or, in whole or in part, into money or other property; or
2. In the case of an exchange, the manner and basis of exchanging the shares to be acquired for securities of the acquiring corporation or any other corporation or, in whole or part, into money or other property;

d. In the case of a merger, a statement of any amendments to the articles of the surviving corporation proposed as part of the merger; and

e. Any other provisions with respect to the proposed merger or exchange that are deemed necessary or desirable.

Subdivision 2. Other agreements. The procedure authorized by this Section does not limit the power of a corporation to acquire all or part of the shares of one or more classes or series of another corporation through a negotiated agreement with the shareholders or otherwise. [TCR 94-124, 15-68]

11-613 Plan approval.

Subdivision 1. Board approval; notice to shareholders. A resolution containing the plan of merger or exchange shall be approved by the affirmative vote of a majority of the directors present at a meeting of the board of each constituent business entity and shall then be submitted at a regular or a special meeting to the shareholders of (i) each constituent business entity, in the case of a plan of merger, and (ii) the business entity whose shares will be acquired by the acquiring corporation in the exchange, in the case of a plan of exchange. If shareholders holding any class or series of stock of the corporation are entitled to vote on the plan of merger or exchange pursuant to this Section, written notice shall be given to every shareholder of a corporation, whether or not entitled to vote at the meeting, not less than 14 days nor more than 60 days before the meeting, in the manner provided in Section 11-435 for notice of meetings of shareholders. The written notice shall state that a purpose of the meeting is to consider the proposed plan of merger or exchange. A copy or short description of the plan of merger or exchange shall be included in or enclosed with the notice.

Subdivision 2. Approval by shareholders.

a. At the meeting, a vote of the shareholders shall be taken on the proposed plan. The plan of merger or exchange is adopted when approved by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote. Except as provided in paragraph (b), a class or series of shares of the corporation is entitled to vote as a class or series if any provision of the plan would, if contained in a proposed amendment to the articles, entitle the class or series of shares to vote as a class or series and, in the case of an exchange, if the class or series is included in the exchange.

b. A class or series of shares of the corporation is not entitled to vote as a class or series solely because the plan of merger or exchange effects a cancellation of the shares of the class or series if the plan of merger or exchange effects a cancellation of all shares of the corporation of all classes and series that are outstanding immediately prior to the merger or exchange and shareholders of shares of that class or series are entitled to obtain payment for the fair value of their shares under Section 11-471 in the event of the merger or exchange.

Subdivision 3. When approval by shareholder not required. Notwithstanding the provisions of subdivisions 1 and 2, submission of a plan of merger to a vote at a meeting of shareholders of a surviving corporation is not required if:

a. The articles of the corporation will not be amended in the transaction;
b. Each holder of shares of the corporation that were outstanding immediately before the effective date of the transaction will hold the same number of shares with identical rights immediately thereafter;
c. The number of shares of the corporation entitled to vote immediately after the merger, plus the number of shares of the corporation entitled to vote issuable on conversion of securities other than shares or on the exercise of rights to purchase securities issued by virtue of the terms of the transaction, will not exceed by more than 20 percent, the number of shares of the corporation entitled to vote immediately before the transaction; and
d. The number of participating shares of the corporation immediately after the merger, plus the number of participating shares of the corporation issuable on conversion, or on the exercise of rights to purchase, securities issued in the transaction, will not exceed by more than 20 percent, the number of participating shares of the corporation immediately before the transaction. "Participating shares" are outstanding shares of the corporation that entitle their holders to participate without imitation in distributions by the corporation. [TCR 94-124, 15-68]

11-615 Articles of merger or exchange; certificate.

Subdivision 1. Contents of articles. Upon receiving the approval required by Section 11-613, articles of merger or exchange shall be prepared that contain:

a. The plan of merger or exchange; and
b. A statement that the plan has been approved by each business entity pursuant to this Code.

Subdivision 2. Articles signed, filed. The articles of merger or exchange shall be signed on behalf of each constituent business entity and filed with the Tribal Secretary.

Subdivision 3. Certificate. The Tribal Secretary shall issue a certificate of merger to the surviving corporation or its legal representative and a certificate of exchange to the acquiring corporation or its legal representative. [TCR 94-124, 15-68]

11-621 Merger of subsidiary.

Subdivision 1. When authorized; contents of plan. A parent owning at least 90 percent of the outstanding shares of each class and series of a subsidiary directly, or indirectly through related corporations, may merge the subsidiary into itself or into any other subsidiary at least 90 percent of the outstanding shares of each class and series of which is owned by the parent directly, or indirectly through related corporations, without a vote of the shareholders or itself or any subsidiary or may merge itself, or itself and one or more of the subsidiaries, into one of the subsidiaries under this Section. A resolution approved by the affirmative vote of a majority of the directors of the parent present shall set forth a plan of merger that contains:

a. The name of the subsidiary or subsidiaries, the name of the parent and the name of the surviving corporation;

b. The manner and basis of converting the shares of the subsidiary or subsidiaries or parent into securities of the parent, subsidiary, or of another corporation or, in whole or in part, into money or other property;
c. If the parent is a constituent corporation but is not the surviving corporation in the merger, a provision for the pro-rata issuance of shares of the surviving corporation to the holders of shares of the parent on surrender of any certificates for shares of the parent; and
d. If the surviving corporation is a subsidiary, a statement of any amendments to the articles of the surviving corporation that will be part of the merger.

If the parent is a constituent corporation but is not the surviving corporation in the merger, the resolution is not effective unless it is also approved by the affirmative vote of the holders of a majority of the voting power of all shares of the parent entitled to vote at a regular or special meeting held in accordance with Section 11-613 if the parent is a Tribal corporation or in accordance with the laws under which it is incorporated if the parent is a foreign corporation.

Subdivision 2. Notice to shareholders of subsidiary. A copy of the plan to merger shall be mailed to each shareholder, other than the parent and any subsidiary, of each subsidiary that is a constituent corporation in the merger.
Subdivision 3. Articles of merger, contents of articles. Articles of merger shall be prepared that contain:

a. The plan of merger;
b. The number of outstanding shares of each class and series of each subsidiary that is a constituent corporation in the merger and the number of shares of each class and series of the subsidiary or subsidiaries owned by the parent directly, or indirectly through related corporations;
c. The date a copy of the plan of merger was mailed to shareholders, other than the parent or a subsidiary, of each subsidiary that is a constituent corporation in the merger; and
d. A statement that the plan of merger has been approved by the parent under this Section.

Subdivision 4. Articles signed, filed. Within 30 days after a copy of the plan of merger is mailed to shareholders of each subsidiary that is a constituent corporation to the merger, or upon waiver of the mailing by the holders of all outstanding shares of each subsidiary that is a constituent corporation to the merger, the articles of merger shall be signed on behalf of the parent and filed with the Tribal Secretary.

Subdivision 5. Certificate. The Tribal Secretary shall issue a certificate of merger to the parent or its legal representative or, if the parent is a constituent corporation but is not the surviving corporation in the merger, to the surviving corporation or its legal representative.

Subdivision 6. Rights of dissenting shareholders. In the event all of the stock of one or more Tribal subsidiaries of the parent that is a constituent party to a merger under this Section is not owned by the parent directly, or indirectly through related corporations, immediately prior to the merger, the shareholders of each Tribal subsidiary have dissenter's rights under Section 11-471, without regard to Sections 11-471, subdivision 3, and 11-473. If the parent is a constituent corporation but is not the surviving corporation in the merger, and the articles of incorporation of the surviving corporation immediately after the merger differ from the articles of incorporation of the parent immediately prior to the merger in a manner that would entitle a shareholder of the parent to dissenter's rights under Section 11-471, subdivision 1, paragraph (a), if the articles of incorporation of the surviving corporation constituted an amendment to the articles of incorporation of the parent, that shareholder of the parent has dissenter's rights as provided under Sections 11-471 and 11-473. Except as provided in this subdivision, Sections 11-471 and 11-473 do not apply to any merger effected under this Section.

Subdivision 7. Non-exclusivity. A merger among a parent and one or more subsidiaries or among two or more subsidiaries of a parent may be accomplished under Sections 11-611, 11-613, and 11-615 instead of this Section, in which case this Section does not apply. [TCR 94-124, 15-68]

11-631 Abandonment.

Subdivision 1. By shareholders or plan. After a plan of merger or exchange has been approved by the shareholders entitled to vote on the approval of the plan as provided in Section 11-613, and before the effective date of the plan, it may be abandoned:

a. If the shareholders of each of the constituent business entities entitled to vote on the approval of the plan as provided in Section 11-613 have approved the abandonment at a meeting by the affirmative vote of the holders of a majority of the voting power of the shares entitled to vote and, if the shareholders of a constituent business entity are not entitled to vote on the approval of the plan under Section 11-613, the board of directors of the constituent business entity has approved the abandonment by the affirmative vote of a majority of the directors present;
b. If the plan itself provides for abandonment and all conditions for abandonment set forth in the plan are met; or
c. Pursuant to subdivision 2.

Subdivision 2. By board. A plan of merger or exchange may be abandoned, before the effective date of the plan, by a resolution of the board of directors of any constituent business entity abandoning the plan of merger or exchange approved by the affirmative vote of a majority of the directors present, subject to the contract rights of any other person under the plan.

Subdivision 3. Filing of articles. If articles of merger or exchange have been filed with the Tribal Secretary, but have not yet become effective, the constituent business entities, in the case of abandonment under subdivision 1, clause (a), the constituent business entities or any one of them, in the case of abandonment under subdivision 1, clause (b), or the abandoning business entity in the case of abandonment under subdivision 2, shall file with the Tribal Secretary articles of abandonment that contain:

a. The names of the constituent business entities;
b. The provision of this Section under which the plan is abandoned; and
c. If the plan is abandoned under subdivision 2, the text of the resolution approved by the affirmative vote of a majority of the directors present abandoning the plan. [TCR 94-124, 15-68]

11-641 Effective date of merger or exchange; effect.

Subdivision 1. Effective date. A merger or exchange is effective when the articles of merger or exchange are filed with the Tribal Secretary or on a later date specified in the articles of merger or exchange.

Subdivision 2. Effect on corporation. When a merger becomes effective:

a. The constituent business entities become a single corporation, the surviving corporation;
b. The separate existence of all constituent business entities except the surviving corporation ceases;
c. The surviving corporation has all the rights, privileges, immunities, and powers, and is subject to all the duties and liabilities, of a corporation incorporated under this Code;
d. The surviving corporation possesses all the rights, privileges, immunities, and franchises, of a public as well as of a private nature, of each of the constituent business entities. All property, real,

personal, and mixed, and all debts due on any account, including subscriptions to shares, and all other choices in action, and every other interest of or belonging to or due to each of the constituent business entities vests in the surviving corporation without any further act or deed. Confirmatory deeds, assignments, or similar instruments to accomplish that vesting may be signed and delivered at any time in the name of a constituent business entity by its current officers or, if the corporation no longer exists, by its last officers. The title to any real estate or any interest therein vested in any of the constituent business entities does not revert nor in any way become impaired by reason of the merger;

e. The surviving corporation is responsible and liable for all the liabilities and obligations of each of the constituent business entities. A claim of or against or a pending proceeding by or against a constituent business entity may be prosecuted as if the merger had not taken place, or the surviving corporation may be substituted in the place of the constituent business entity. Neither the rights of creditors nor any liens upon the property of a constituent business entity are impaired by the merger; and

f. The articles of the surviving corporation are deemed to be amended to the extent that changes in its articles, if any, are contained in the plan of merger.

Subdivision 3. Effect on shareholders. When a merger or exchange becomes effective, the shares of the business entity or business entities to be converted or exchanged under the terms of the plan cease to exist in the case of a merger, or are deemed to be exchanged in the case of an exchange. The holders of those shares are entitled only to the securities money, or other property into which those shares have been converted or for which those shares have been exchanged in accordance with the plan, subject to any dissenter's rights under Section 11-471. [TCR 94-124, 15-68]

11-651 Merger or exchange with foreign corporation.

Subdivision 1. When permitted. A Tribal corporation may merge with or participate in an exchange with a foreign business entity by following the procedures set forth in this Section, if:

1. with respect to a merger, the merger is permitted by the laws of the jurisdiction that governs the foreign business entity; and
2. with respect to an exchange, the corporation whose shares will be acquired is a Tribal corporation, whether or not the exchange is permitted by the laws of the jurisdiction that governs the foreign business entity.

Subdivision 2. Laws applicable before transaction. Each Tribal corporation shall comply with the provisions of Sections 11-601 to 11-651 with respect to the merger or exchange of shares of corporations and each foreign business entity shall comply with the applicable provisions of the laws under which it was incorporated or by which it is governed.

Subdivision 3. Tribal surviving corporation. If the surviving corporation in a merger will be a Tribal corporation, it shall comply with all the provisions of this Code.

Subdivision 4. Incorporation. If the surviving corporation in a merger will be a foreign business entity and will transact business on the Reservation, it shall comply with any laws of the Tribe regarding qualification by a foreign business entity to do business on the Reservation. In every case the surviving corporation shall file with the Tribal Secretary:

a. An agreement that it may be served with process on the Reservation in a proceeding for the enforcement of an obligation of a constituent business entity and in a proceeding for the enforcement of the rights of a dissenting shareholder of a constituent business entity against the surviving corporation;
b. An irrevocable appointment of the Tribal Secretary as its agent to accept service of process in any proceeding and an address to which process may be forwarded; and
c. An agreement that it will promptly pay to the dissenting shareholders of each Tribal constituent corporation the amount, if any, to which they are entitled under Section 11-473. [TCR 94-124, 15-68]

11-661 Transfer of assets; when permitted.

Subdivision 1. Shareholder approval; when not required. A corporation, by affirmative vote of a majority of the directors present, may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the usual and regular course of its business and grant a security interest in all or substantially all of its property and assets whether or not in the usual and regular course of its business, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board deems expedient, in which case no shareholder approval is required.

Subdivision 2. Shareholder approval; when required. A corporation, by affirmative vote of a majority of the directors present, may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets, including its good will, not in the usual and regular course of its business, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board deems expedient, when approved at a regular or special meeting of the shareholders by the affirmative vote of the holders of a majority of the voting power of the shares entitled to vote. Written notice of the meeting shall be given to all shareholders whether or not they are entitled to vote at the meeting. The written notice shall state that a purpose of the meeting is to consider the sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the corporation.

Subdivision 3. Signing of documents. Confirmatory deeds, assignments, or similar instruments to evidence a sale, lease, transfer, or other disposition may be signed and delivered at any time in the name of the transferor by its current officers or, if the corporation no longer exists, by its last officers.

Subdivision 4. Transferee liability. The transferee is liable for the debts, obligations, and liabilities of the transferor only to the extent provided in the contract or agreement between the transferee and the transferor or to the extent provided by this Code or other laws of the Tribe. [TCR 94-124, 15-68]

TITLE 11
ARTICLE 7
DISSOLUTION

11-701 Methods of dissolution.
11-711 Voluntary dissolution by incorporators.
11-721 Voluntary dissolution by shareholders.
11-723 Filing notice of intent to dissolve; effect.
11-727 Dissolution procedure for corporations that give notice to creditors and claimants.
11-729 Dissolution procedure for corporations that do not give notice.
11-731 Revocation of dissolution proceedings.
11-734 Effective date of dissolution; certificate.
11-741 Supervised voluntary dissolution.
11-751 Judicial intervention; equitable remedies or dissolution.
11-753 Procedure in involuntary or supervised voluntary dissolution.
11-755 Qualifications of receivers; powers.
11-757 Action by Tribal Council.
11-759 Filing claims in proceedings to dissolve.
11-761 Discontinuance of dissolution proceedings.
11-763 Decree of dissolution.
11-765 Filing decree.
11-771 Deposit with Tribal Treasurer of amount due certain shareholders.
11-781 Claims barred; exceptions.
11-783 Right to sue or defend after dissolution.
11-791 Omitted assets.

11-701 Methods of dissolution. A corporation may be dissolved:

a. By the incorporators pursuant to Section 11-711;
b. By the shareholders pursuant to Sections 11-721 to 11-729; or
c. By order of the Court pursuant to Sections 11-741 to 11-765. [TCR 94-124]

11-711 Voluntary dissolution by incorporators.

Subdivision 1. Manner. A corporation that has not issued shares may be dissolved by the incorporators in the manner set forth in this Section.

Subdivision 2. Articles of dissolution.

a. A majority of the incorporators shall sign articles of dissolution containing:
   1. The name of the corporation;
   2. The date of incorporation;
   3. A statement that shares have not been issued;
   4. A statement that all consideration received from subscribers for shares to be issued, less expenses incurred in the organization of the corporation, has been returned to the subscribers; and
   5. A statement that no debts remain unpaid.
b. The articles of dissolution shall be filed with the Tribal Secretary.

Subdivision 3. Effective date. When the articles of dissolution have been filed with the Tribal Secretary, the corporation is dissolved.

Subdivision 4. Certificate. The Tribal Secretary shall issue to the dissolved corporation or its legal representative a certificate of dissolution that contains:

a. The name of the corporation;
b. The date and time the articles of dissolution were filed with the Tribal Secretary; and
c. A statement that the corporation is dissolved. [TCR 94-124]

11-721 Voluntary dissolution by shareholders.

Subdivision 1. Manner. A corporation may be dissolved by the shareholders when authorized in the manner set forth in this Section.

Subdivision 2. Notice; approval.

a. Written notice shall be given to each shareholder, whether or not entitled to vote at a meeting of shareholders, within the time and in the manner provided in Section 11-435 for notice of meetings of shareholders and whether the meeting is a regular or a special meeting shall state that a purpose of the meeting is to consider dissolving the corporation.
b. The proposed dissolution shall be submitted for approval at a meeting of shareholders. If the proposed dissolution is approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote, the dissolution shall be commenced. [TCR 94-124]

11-723 Filing notice of intent to dissolve; effect.

Subdivision 1. Contents. If dissolution of the corporation is approved pursuant to Section 11-721, subdivision 2, the corporation shall file with the Tribal Secretary a notice of intent to dissolve. The notice shall contain:

a. The name of the corporation;
b. The date and place of the meeting at which the resolution was approved pursuant to Section 11-721, subdivision 2; and
c. A statement that the requisite vote of the shareholders was received, or that all shareholders entitled to vote signed a written action.

Subdivision 2. Winding up. When the notice of intent to dissolve has been filed with the Tribal Secretary, and subject to Section 11-731, the corporation shall cease to carry on its business, except to the extent necessary for the winding up of the corporation. The shareholders shall retain the right to revoke the dissolution proceedings in accordance with Section 11-731 and the right to remove directors or fill vacancies on the board. The corporate existence continues to the extent necessary to wind up the affairs of the corporation until the dissolution proceedings are revoked or articles of dissolution are filed with the Tribal Secretary.

Subdivision 3. Remedies continued. The filing with the Tribal Secretary of a notice of intent to dissolve does not affect any remedy in favor of the corporation or any remedy against it or its directors, officers, or shareholders in those capacities, except as provided in Sections 11-727, 11-729, and 11-781. [TCR 94-124]

11-727 Dissolution procedure for corporations that give notice to creditors and claimants.

Subdivision 1. When permitted; how given. When a notice of intent to dissolve has been filed with the Tribal Secretary, the corporation may give notice of the filing to each creditor of and claimant against the corporation known or unknown, present or future, and contingent or non-contingent. If notice to creditors and claimants is given, it must be given by publishing the notice once each week for four successive weeks in a legal newspaper on the Reservation and by giving written notice to known creditors and claimants.

Subdivision 2. Contents. The notice to creditors and claimants shall contain:

a. A statement that the corporation is in the process of dissolving;
b. A statement that the corporation has filed with the Tribal Secretary a notice of intent to dissolve;
c. The date of filing the notice of intent to dissolve;
d. The address of the office to which written claims against the corporation must be presented; and
e. The date by which all the claims must be received, which shall be the later of 90 days after published notice or, with respect to a particular known creditor or claimant, 90 days after the date on which written notice was given to that creditor or claimant. Published notice is deemed given on the date of first publication for the purpose of determining this date.

Subdivision 3. Claims against corporations that give notice.

a. A corporation that gives notice to creditors and claimants has 30 days from the receipt of each claim filed according to the procedures set forth by the corporation on or before the date set forth in the notice to accept or reject the claim by giving written notice to the person submitting it. A claim not expressly rejected in this manner is deemed accepted.
b. A creditor or claimant to whom notice is given and whose claim is rejected by the corporation has 60 days from the date of rejection, 180 days from the date the corporation filed with the Tribal Secretary the notice of intent to dissolve, or 90 days after the date on which notice was given to the creditor or claimant, whichever is longer, to pursue any other remedies with respect to the claim.
c. A creditor or claimant to whom notice is given who fails to file a claim according to the procedures set forth by the corporation on or before the date set forth in the notice is barred from suing on that claim or otherwise realizing upon or enforcing it, except as provided in Section 11-781.
d A creditor or claimant whose claim is rejected by the corporation under paragraph (b) is barred from suing on that claim or otherwise realizing upon or enforcing it, if the creditor or claimant does not initiate legal, administrative, or arbitration proceedings with respect to the claim within the time provided in paragraph (b).

Subdivision 4. Articles of dissolution; when filed. Articles of dissolution for a corporation that has given notice to creditors and claimants under this Section must be filed with the Tribal Secretary after:

1. the 90-day period in subdivision 2, paragraph (e), has expired and the payment of claims of all creditors and claimants filing a claim within that period has been made or provided for; or
2. the longest of the periods described in subdivision 3, paragraph (b), has expired and there are no pending legal, administrative, or arbitration proceedings by or against the corporation commenced within the time provided in subdivision 3, paragraph (b).

Subdivision 5. Contents of articles. The articles of dissolution must state:

1. the last date on which the notice was given and: (i) that the payment of all creditors and claimants filing a claim within the 90-day period in subdivision 2, paragraph (e), has been made or provided for; or (ii) the date on which the longest of the periods described in subdivision 3, paragraph (b), expired;
2. that the remaining property, assets, and claims of the corporation have been distributed among its shareholders in accordance with Section 11-551, subdivision 4, or that adequate provision has been made for that distribution; and
3. that there are no pending legal, administrative, or arbitration proceedings by or against the corporation commenced within the time provided in subdivision 3, paragraph (b), or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in a pending proceeding. [TCR 94-124]

11-729 Dissolution procedure for corporations that do not give notice.

Subdivision 1. Articles of dissolution when filed. Articles of dissolution for a corporation that has not given notice to creditors and claimants in the manner provided in Section 11-727 must be filed with the Tribal Secretary after:

1. the payment of claims of all known creditors and claimants has been made or provided for; or
2. at least two years have elapsed from the date of filing the notice of intent to dissolve.

Subdivision 2. Contents of articles. The articles of dissolution must state:

1. if articles of dissolution are being filed pursuant to subdivision 1, clause (1), that all known debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made for payment or discharge;
2. that the remaining property, assets, and claims of the corporation have been distributed among its shareholders in accordance with Section 11-551, subdivision 4, or that adequate provision has been made for that distribution; and
3. that there are no pending legal, administrative, or arbitration proceedings by or against the corporation, or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in a pending proceeding.

Subdivision 3. Claims against corporations that do not give notice.

a. If the corporation has paid or provided for all known creditors or claimants at the time articles of dissolution are filed. A creditor or claimant who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding within two years after the date of filing the notice of intent to dissolve is barred from suing on that claim or otherwise realizing upon or enforcing it.
b. If the corporation has not paid or provided for all known creditors and claimants at the time articles of dissolution are filed, a person who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding within two years after the date of filing the notice of intent to dissolve is barred from suing on that claim or otherwise realizing upon or enforcing it, except as provided in Section 11-781. [TCR 94-124]

11-731 Revocation of dissolution proceedings.

Subdivision 1. Generally. Dissolution proceedings commenced pursuant to Section 11-721 may be revoked prior to filing of articles of dissolution.

Subdivision 2. Notice to shareholders; approval. Written notice shall be given to every shareholder entitled to vote at shareholders' meeting within the time and in the manner provided in Section 11-435 for notice of meetings of shareholders and shall state that a purpose of the meeting is to consider the advisability of revoking the dissolution proceedings. The proposed revocation shall be submitted to the shareholders at the meeting. If the proposed revocation is approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote, the dissolution proceedings are revoked.

Subdivision 3. Effective date; effect. Revocation of dissolution proceedings is effective when a notice of revocation is filed with the Tribal Secretary. The corporation may thereafter resume business. [TCR 94-124]

11-734 Effective date of dissolution; certificate.

Subdivision 1. Effective date. When the articles of dissolution have been filed with the Tribal Secretary, the corporation is dissolved.

Subdivision 2. Certificate. The Tribal Secretary shall issue to the dissolved corporation or its legal representative a certificate of dissolution that contains:

1. the name of the corporation;
2. the date and time the articles of dissolution were filed with the Tribal Secretary; and
3. a statement that the corporation is dissolved. [TCR 94-124]

11-741 Supervised voluntary dissolution. After the notice of intent to dissolve has been filed with the Tribal Secretary and before a certificate of dissolution has been issued, the corporation or, for good cause shown, a shareholder or creditor may apply to the Court to have the dissolution conducted or continued under the supervision of the Court as provided in Sections 11-751 to 11-781. [TCR 94-124]

11-751 Judicial intervention; equitable remedies or dissolution.

Subdivision 1. When permitted. The Court may grant any equitable relief it deems just and reasonable in the circumstances or may dissolve a corporation and liquidate its assets and business:

a. In a supervised voluntary dissolution pursuant to Section 11-741;
b. In an action by a shareholder when it is established that:
    1. the directors or the persons having the authority otherwise vested in the board are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock;
    2. the directors or those in control of the corporation have acted fraudulently, illegally, or in a manner unfairly prejudicial toward one or more shareholders in their capacities as shareholders, directors, or officers, or as employees of a closely-held corporation;
    3. the shareholders of the corporation are so divided in voting power that, for a period that includes the time when two consecutive regular meetings were held, they have failed to elect successors to directors whose terms have expired or would have expired upon the election and qualification of their successors;
    4. the corporate assets are being misapplied or wasted; or

5. the period of duration as provided in the articles has expired and has not been extended as provided in Section 11-801;

c. In an action by a creditor when:

1. the claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied; or
2. the corporation has admitted in writing that the corporation is unable to pay its debts in the ordinary course of business; or

d. In an action by the Tribal Council to dissolve the corporation in accordance with Section 11-757 when it is established that a decree of dissolution is appropriate.

Subdivision 2. Buy-out on motion. In an action under subdivision 1, clause (b), involving a closely-held corporation at the time the action is commenced and in which one or more of the circumstances described in that clause is established, the Court may, upon motion of a corporation or a shareholder or beneficial owner of shares of the corporation, order the sale by a plaintiff or a defendant of all shares of the corporation held by the plaintiff or defendant to either the corporation or the moving shareholders, whichever is specified in the motion, if the Court determines in its discretion that an order would be fair and equitable to all parties under all of the circumstances of the case. Within five days after the entry of the order, the corporation shall provide each selling shareholder or beneficial owner with the information it is required to provide under Section 11-473, subdivision 5, paragraph (a). If the parties are unable to agree on fair value within 40 days of entry of the order, the Court shall determine the fair value of the shares under the provisions of Section 11-473, subdivision 7, and may allow interest or costs as provided in Section 11-473, subdivisions 1 and 8. The purchase price shall be paid in one or more installments as agreed on by the parties, or, if no agreement can be reached within 40 days of entry of the order, as ordered by the Court. Upon entry of an order for the sale of shares under this subdivision and provided that the corporation or the moving shareholders post a bond in adequate amount with sufficient sureties or otherwise satisfy the Court that the full purchase price of the shares, plus such additional costs, expenses, and fees as may be awarded will be paid when due and payable, the selling shareholders shall no longer have any rights or status as shareholders, officers, or directors, except the right to receive the fair value of their shares plus such other amounts as might be awarded.

Subdivision 3. Condition of corporation. In determining whether to order equitable relief, dissolution, or a buy-out, the Court shall take into consideration the financial condition of the corporation but shall not refuse to order equitable relief, dissolution, or a buy-out solely on the ground that the corporation has accumulated current operating profits.

Subdivision 4. Considerations in granting relief involving closely-held corporations. In determining whether to order equitable relief, dissolution, or a buy-out, the Court shall take into consideration the duty which all shareholders in a closely-held corporation owe one another to act in an honest, fair, and reasonable manner in the operation of the corporation and the reasonable expectations of the shareholders as they exist at the inception and develop during the course of the shareholders' relationship with the corporation and with each other.

Subdivision 5. Dissolution as remedy. In deciding whether to order dissolution, the Court shall consider whether lesser relief suggested by one or more parties, such as any form of equitable relief, a buy-out, or a partial liquidation, would be adequate to permanently relieve the circumstances established under subdivision 1, clause (b) or (c). Lesser relief may be ordered in any case where it would be appropriate under all the facts and circumstances of the case.

Subdivision 6. Expenses. If the Court finds that a party to a proceeding brought under this Section has acted arbitrarily, vexatiously, or otherwise not in good faith, it may in its discretion award reasonable expenses, including attorney's fees and disbursements, to any of the other parties.

Subdivision 7. Venue; parties. Proceedings under this Section shall be brought in the Court. It is not necessary to make shareholders parties to the action or proceeding unless relief is sought against them personally. [TCR 94-124]

11-753 Procedure in involuntary or supervised voluntary dissolution.

Subdivision 1. Action before hearing. In dissolution proceedings the Court may issue injunctions, appoint receivers with all powers and duties the Court directs, take other actions required to preserve the corporate assets wherever situated, and carry on the business of the corporation until a full hearing can be held.

Subdivision 2. Action after hearing. After a full hearing has been held, upon whatever notice the Court directs to be given to all parties to the proceedings and to any other parties in interest designated by the Court, the Court may appoint a receiver to collect the corporate assets, including all amounts owing to the corporation by subscribers on account of any unpaid portion of the consideration for the issuance of shares. A receiver has authority, subject to the order of the Court, to continue the business of the corporation and to sell, lease, transfer, or otherwise dispose of all or any of the property and assets of the corporation either at public or private sale.

Subdivision 3. Discharge of obligations. The assets of the corporation or the proceeds resulting from a sale, lease, transfer, or other disposition shall be applied in the following order of priority to the payment and discharge or:

a. The costs and expenses of the proceedings, including attorney's fees and disbursements;
b. Debts, taxes and assessments due the Tribe, its subdivisions, the United States, states and their subdivisions, and other tribes and their subdivisions, in that order;
c. Claims duly proved and allowed to employees under the provisions of any applicable workers compensation act; provided, that claims under this clause shall not be allowed if the corporation carried workers' compensation insurance, as provided by law, at the time the injury was sustained;
d. Claims, including the value of all compensation paid in any medium other than money, duly proved and allowed to employees for services performed within three months preceding the appointment of the receiver, if any; and
e. other claims duly proved and allowed.

Subdivision 4. Remainder to shareholders. After payment of the expenses of receivership and claims of creditors duly proved, the remaining assets, if any, shall be distributed to the shareholders in accordance with Section 11-551, subdivision 4. [TCR 94-124]

11-755 Qualifications of receivers; powers.

Subdivision 1. Qualifications. A receiver shall be a natural person or a Tribal corporation or a foreign corporation authorized to transact business on the Reservation. A receiver shall give bond as directed by the Court with the sureties required by the Court.

Subdivision 2. Powers. A receiver may sue and defend in the Court as receiver of the corporation. The Court appointing the receiver has exclusive jurisdiction of the corporation and its property. [TCR 94-124]

11-757 Action by Tribal Council.

Subdivision 1. When permitted. A corporation may be dissolved involuntarily by a decree of the Court in an action filed by the Tribal Council when it is established that:

a. The articles and certificate of incorporation were procured through fraud;
b. The corporation was incorporated for a purpose not permitted by Section 11-101;
c. The corporation failed to comply with the requirements of Sections 11-021 to 11-155 essential to incorporation under or election to become governed by this Code;
d. The corporation has flagrantly violated a provision of this Code, or has violated a provision of this Code more than once, or has violated more than one provision of this Code; or
e The corporation has acted, or failed to act, in a manner that constitutes surrender or abandonment of the corporate franchise, privileges, or enterprise.

Subdivision 2. Notice to corporation; correction. An action shall not be commenced under this Section until 30 days after notice to the corporation by the Tribal Council of the reason for the filing of the action. If the reason for filing the action is an act that the corporation has done, or omitted to do, and the act or omission may be corrected by an amendment of the articles or bylaws or by performance of or abstention from the act, the Tribal Council shall give the corporation 30 additional days in which to effect the correction before filing the action.

11-759 Filing claims in proceedings to dissolve.

Subdivision 1. In proceedings referred to in Section 11-751 to dissolve a corporation, the Court may require all creditors and claimants of the corporation to file their claims under oath with the Tribal Secretary or with the receiver in a form prescribed by the Court.

Subdivision 2. If the Court requires the filing of claims, it shall fix a date, which shall be not less than 120 days from the date of the order, as the last day for the filing of claims, and shall prescribe the notice of the fixed date that shall be given to creditors and claimants. Before the fixed date, the Court may extend the time for filing claims. Creditors and claimants failing to file claims on or before the fixed date may be barred, by order of Court, from claiming an interest in or receiving payment out of the property or assets of the corporation. [TCR 94-124]

11-761 Discontinuance of dissolution proceedings. The involuntary or supervised voluntary dissolution of a corporation shall be discontinued any time during the dissolution proceedings when it is established that cause for dissolution no longer exists. When this is established, the Court shall dismiss the proceedings and direct the receiver, if any, to redeliver to the corporation all its remaining property and assets. [TCR 94-124]

11-763 Decree of dissolution.

Subdivision 1. When entered. In an involuntary or supervised voluntary dissolution after the costs and expenses of the proceeding and all debts, obligations, and liabilities of the corporation have been paid or discharged and all of its remaining property and assets have been distributed to its shareholders or, if its property and assets are not sufficient to satisfy and discharge the costs, expenses, debts, obligations, and liabilities, when all the property and assets have been applied so far as they will go to their payment according to the priorities set forth in Section 11-753, the Court shall enter a decree dissolving the corporation.

Subdivision 2. Effective date. When the decree dissolving the corporation has been entered, the corporation is dissolved. [TCR 94-124]

11-765 Filing decree. After the Court enters a decree dissolving a corporation, the Tribal Secretary shall file a certified copy of the decree in his office. The Tribal Secretary shall not charge a fee for filing the decree. [TCR 94-124]

11-771 Deposit with Tribal Treasurer of amount due certain shareholders. Upon dissolution of a corporation, the portion of the assets distributable to a shareholder who is unknown or cannot be found, or who is under disability, if there is no person legally competent to receive the distributive portion, shall be reduced to money and deposited with the Tribal Treasurer. The amount deposited is appropriated to the Tribal Treasurer and shall be paid over to the shareholder or a legal representative, upon proof satisfactory to the Tribal Treasurer of a right to payment. [TCR 94-124]

11-781 Claims barred; exceptions.

Subdivision 1. Claims barred. Except as provided in this Section, a creditor or claimant whose claims are barred under Section 11-727, 11-729, or 11-759 includes a person who is or becomes a creditor or claimant at any time before, during, or following the conclusion of dissolution proceedings, and all those claiming through or under the creditor or claimant.

Subdivision 2. Claims reopened. At any time within one year after articles of dissolution have been filed with the Tribal Secretary pursuant to Section 11-727 or 11-729, subdivision 1, clause (2), or a decree of dissolution has been entered, a creditor or claimant who shows good cause for not having previously filed the claim may apply to the Court to allow a claim:

a. Against the corporation to the extent of undistributed assets; or
b. If the undistributed assets are not sufficient to satisfy the claim, against a shareholder, whose liability shall be limited to a portion of the claim that is equal to the portion of the distributions to shareholders in liquidation or dissolution received by the shareholder, but in no event may a shareholder's liability exceed the amount which that shareholder actually received in the dissolution.

Subdivision 3. Obligations incurred during dissolution proceedings. All known contractual debts, obligations, and liabilities incurred in the course of winding up the corporation's affairs shall be paid or provided for by the corporation before the distribution of assets to a shareholder. A person to whom this kind of debt, obligation, or liability is owed but not paid may pursue any remedy before the expiration of the applicable statute of limitations against the officers and directors of the corporation who are responsible for, but who fail to cause the corporation to pay or make provision for payment of the debts, obligations, and liabilities or against shareholders to the extent permitted under Section 11-559. This subdivision does not apply to dissolution under the supervision or order of the Court. [TCR 94-124]

11-783 Right to sue or defend after dissolution. After a corporation has been dissolved, any of its former officers, directors, or shareholders may assert or defend, in the name of the corporation, any claim by or against the corporation. [TCR 94-124]

11-791 Omitted assets. Title to assets remaining after payment of all debts, obligations, or liabilities and after distributions to shareholders may be transferred by the Court to any person entitled to those assets

TITLE 11
ARTICLE 8.01
EXTENSION

11-801 Extension after duration expired. 11-805 Effect of extension.

11-801 Extension after duration expired.

Subdivision 1. Extension by amendment. A corporation whose period of duration as provided in the articles has expired and which has continued to do business despite that expiration may reinstate its articles and extend the period of corporate duration, including making the duration perpetual, at any time after the date of expiration by filing an amendment to the articles as set forth in this Section.

Subdivision 2. Contents of amendment. An amendment to the articles shall be approved by the affirmative vote of a majority of the directors present and shall include:

a. The date the period of duration expired under the articles;
b. A statement that the period of duration will be perpetual or, if some shorter period is to be provided, the date to which the period of duration is extended; and
c. A statement that the corporation has been in continuous operation since before the date of expiration of its original period of duration.

Subdivision 3. Approval by shareholders. The amendment to the articles shall be presented, after notice, to a meeting of the shareholders. The amendment is adopted when approved by the shareholders pursuant to Section 11-135.

Subdivision 4. Filing. Articles of amendment conforming to Section 11-139 shall be filed with the Tribal Secretary. [TCR 94-124]

11-805 Effect of extension. Filing with the Tribal Secretary of articles of amendment extending the period of duration of a corporation:

a. Relates back to the date of expiration of the original period of duration of the corporation as provided in the articles;
b. Validates contracts or other acts within the authority of the articles, and the corporation is liable for those contracts or acts; and
c. Restores to the corporation all the assets and rights of the corporation to the extent they were held by the corporation before expiration of its original period of duration, except those sold or otherwise distributed after that time. [TCR 94-124]

TITLE 11
ARTICLE 8.21
CORPORATE REGISTRATION

11-821 Winnebago Tribal corporate registration.

11-821 Winnebago Tribal corporate registration.

Subdivision 1. Information required. A Tribal corporation shall once each calendar year file with the Tribal Secretary a registration containing:

a. The name of the corporation;
b. The address of its principal executive office, if different from the registered office address;
c. The address of its registered office;
d. The name of its registered agent;
e. The name and business address of the officer or other person exercising the principal functions of the chief executive officer of the corporation; and
f. The signature of a person authorized to sign the registration on behalf of the corporation.

Subdivision 2. Information public. The information required by subdivision 1 is public data.

Subdivision 3. Loss of good standing. A corporation that fails to file a registration pursuant to the requirements of subdivision 1 loses its good standing. The corporation may regain its good standing by filing a single annual registration and paying a $23.00 fee.

Subdivision 4. Notice of repeated violation. If a corporation fails for three consecutive years to file a registration pursuant to the requirements of subdivision 1, the Tribal Secretary shall give notice by first class mail to the corporation at its registered office that it has violated this Section and is subject to dissolution by the office of the Tribal Secretary if the delinquent registration is not filed pursuant to subdivision 1 and the $25.00 fee paid within 60 days after the mailing of the notice. For purposes of this subdivision, delinquent registration means a single annual registration.

Subdivision 5. Penalty.

a. A corporation that has failed for three consecutive years to file a registration pursuant to the requirements of subdivision 1, has been notified of the failure pursuant to subdivision 4, and has failed to file the delinquent registration during the 60 day period described in subdivision 4, shall be dissolved by the Tribal Secretary as described in paragraph (b).
b. Immediately after the expiration of the 60-day period described in paragraph (a), if the corporation has not filed the delinquent registration, the Tribal Secretary shall issue a certificate of involuntary dissolution, and a copy of the certificate shall be filed in the office of the Tribal Secretary. The original certificate shall be sent to the registered office of the corporation. The Tribal Secretary shall annually inform the Tribal Council and the Tribal Treasurer of the names of corporations dissolved under this Section during the preceding year. A corporation dissolved in this manner is not entitled to the benefits of Section 11-781. The liability, if any, of the shareholders of a corporation dissolved in this manner shall be determined and limited in accordance with Section 11-557, except that the shareholders shall have no liability to any director of the corporation under Section 11-559, subdivision 2.

Subdivision 6. Reinstatement. A corporation may retroactively reinstate its corporate existence after statutory dissolution by filing a single annual registration and paying a $25.00 fee. Filing the annual registration with the Tribal Secretary:

1. returns the corporation to active status as of the date of the statutory dissolution;
2. validates contracts or other acts within the authority of the articles, and the corporation is liable for those contracts or acts; and
3. restores to the corporation all assets and rights of the corporation and its shareholders to the extent they were held by the corporation and its shareholders before the statutory dissolution occurred, except to the extent that assets or rights were affected by acts occurring after the dissolution or sold or otherwise distributed after that time. [TCR 94-124]

TITLE 11
ARTICLE 9
ACTIONS AGAINST CORPORATIONS

11-901 Service of process on corporation. 11-917 Court action; remedies and penalties.

11-901 Service of process on corporation.

Subdivision 1. Who may be served. A process, notice, or demand required or permitted by law to be served upon a corporation may be served either upon the registered agent, if any, of the corporation named in the articles, or upon an officer of the corporation, or upon the Tribal Secretary as provided in this Section.

Subdivision 2. Service on Tribal Secretary when permitted. If a corporation has appointed and maintained a registered agent on the Reservation but neither its registered agent nor an officer of the corporation can be found at the registered office, or if a corporation fails to appoint or maintain a registered agent on the Reservation and an officer of the corporation cannot be found at the registered office, then the Tribal Secretary is the agent of the corporation upon whom the process, notice, or demand may be served. The return of a licensed law enforcement official, or the affidavit of a person not a party, that no registered agent or officer can be found at the registered office on the Reservation is conclusive evidence that the corporation has no registered agent or officer at its registered office. Service on the Tribal Secretary of any process, notice, or demand is deemed personal service upon the corporation and shall be made by filing with the Tribal Secretary duplicate copies of the process, notice or demand. The Tribal Secretary shall immediately forward, by certified mail addressed to the corporation at its registered office, a copy of the process, notice, or demand. Service on the Tribal Secretary is returnable in not less than 30 days notwithstanding a shorter period specified in the process, notice, or demand.

Subdivision 3. Record of service. There shall be maintained in the office of the Tribal Secretary a record of all processes, notices, and demands served upon the Tribal Secretary under this Section, including the date and time of service and the action taken with reference to it.

Subdivision 4. Other methods of service. Nothing in this Section limits the right of a person to serve any process, notice, or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law. [TCR 94-124]

11-917 Court action; remedies and penalties.

Subdivision 1. Court action. The Court shall have the authority to determine, apply and enforce appropriate remedies and penalties, including, but not limited to, civil fines, for violations of this Code, or of the articles of incorporation or bylaws of any corporation formed pursuant to this Code. The remedies available to corporations and their shareholders, shall include declaratory and injunctive relief, and special writs of mandamus, to compel actions necessary to secure the rights, obligations or privileges of such parties, whether or not those rights, obligations or privileges arise under this Code. A prevailing plaintiff in any action shall be awarded costs and reasonable attorney's fees.

Subdivision 2. Tribal intervention. If it appears at any stage of a proceeding in the Court that the Tribe is, or is likely to be, interested therein, or that it is a matter of general public interest, the Court shall order that a copy of the complaint or petition be served upon the Tribal Council in the same manner prescribed for

serving a summons in a civil action. The Tribal Council shall intervene in a proceeding when the Tribal Council determines that the public interest requires it, whether or not the Tribal Council has been served. [TCR 94-124]

TITLE 11
ARTICLE 10
CORPORATIONS WHOLLY OWNED BY THE TRIBE

11-1001 Scope.
11-1002 Application.
11-1003 Special powers, privileges and immunities of corporations wholly owned by the Tribe.
11-1010 Board.
11-1021 Shares in corporations wholly owned by the Tribe; shareholders; voting.
11-1022 Liability of Tribe as shareholder.
11-1023 Shareholder meetings.
11-1030 Assets, distribution of income.
11-1091 Voluntary dissolution by incorporators.

11-1001 Scope. Sections 11-1001 through 11-1091 apply to all Tribal corporations wholly owned by the Tribe, whether directly or as a subsidiary of another Tribal corporation wholly owned by the Tribe, as provided in Section 11-1002.

11-1002 Application.

Subdivision 1. Corporations directly owned by the Tribe. The consent of the Tribal Council shall be required prior to the incorporation under this Code of any corporation to be wholly owned by the Tribe. For this purpose, the incorporator shall file with the Tribal Secretary, when the incorporator files the articles of incorporation of a corporation to be wholly owned by the Tribe, a certified copy of a resolution of the Tribal Council authorizing the formation of the corporation.

Subdivision 2. Corporations indirectly owned by the Tribe. The consent of the board of directors of the corporation wholly owned by the Tribe shall be required prior to the incorporation under this Code of a subsidiary corporation to be wholly owned by a parent corporation that is wholly owned by the Tribe. For this purpose, the incorporator shall file with the Tribal Secretary, when the incorporator files the articles of incorporation of a subsidiary corporation to be wholly owned by a parent corporation that is wholly owned by the Tribe, a certified copy of a resolution of the board of the parent corporation authorizing the formation of the subsidiary corporation.

Subdivision 3. Designation in articles. The articles of a corporation wholly owned, directly or indirectly, by the Tribe and subject to the provisions of Sections 11-1001 to 11-1091 shall expressly so state and when accepting the articles for filing, the Tribal Secretary shall note that the corporation is governed by the provisions of this Code applicable to wholly owned Tribal corporations. [TCR 94-124]

11-1003 Special powers, privileges and immunities of corporations wholly owned by the Tribe.

Subdivision 1. Scope. The special powers, privileges and immunities described in this Section shall be available only to a corporation wholly owned, directly or indirectly, by the Tribe.

Subdivision 2. Jurisdictional and tax immunities. All of the rights, privileges and immunities of the Tribe concerning federal, state, or local taxes, regulations and jurisdiction are hereby conferred on all Tribal corporations wholly owned, directly or indirectly, by the Tribe to the same extent that the Tribe would have such rights, privileges and immunities if it engaged in the activities undertaken by the corporation. Absent

consent by the corporation, a corporation wholly owned, directly or indirectly, by the Tribe shall not be subject to taxation by the Tribe, except to the extent that such taxation is necessary and reasonably appropriate to compensate the Tribe for services provided to the corporation by the Tribe.

Subdivision 3. Sovereign immunity. The sovereign immunity of the Tribe is hereby conferred on all Tribal corporations wholly owned, directly or indirectly, by the Tribe. A corporation wholly owned, directly or indirectly, by the Tribe shall have the power to sue and is authorized to consent to be sued in the Court, and in all other courts of competent jurisdiction, provided, however, that:

a. no such consent to suit shall be effective against the corporation unless such consent is:
   1. explicit,
   2. contained in a written contract or commercial document to which the corporation is a party, and
   3. specifically approved by the board of directors of the corporation, and

b. any recovery against such corporation shall be limited to the assets of the corporation. Any consent to suit may be limited to the Court or courts in which suit may be brought, to the matters that may be made the subject of the suit and to the assets or revenues of the corporation against which any judgment may be executed. [TCR 94-124]

11-1010 Board.

Subdivision 1. Removal of directors. A director of a corporation wholly owned, directly or indirectly, by the Tribe may be removed with or without cause by the Tribal Council.

Subdivision 2. Loans to directors. A corporation wholly owned, directly or indirectly, by the Tribe may not lend money to or guarantee the personal obligation of a director, officer or employee of the corporation under any circumstances. [TCR 94-124]

11-1021 Shares in corporations wholly owned by the Tribe; shareholders; voting.

Subdivision 1. Shares in wholly owned corporations. Share certificates (or transaction statements for uncertificated shares) of corporations wholly owned, directly, by the Tribe shall be issued in the name of the Tribe, and all such shares shall be held by and for the Tribe. No member of the Tribe shall have any personal ownership interest in any corporation wholly owned, directly or indirectly, by the Tribe, whether by virtue of such person's status as a member of the Tribe or otherwise.

Subdivision 2. Shares. A corporation wholly owned, directly, by the Tribe may not issue preferred or special shares.

Subdivision 3. Voting. A member of the Tribal Council shall be authorized to vote shares of the corporation owned by the Tribe, as contemplated by Section 11-445, Subdivision 4 of this Code, in the following manner: Each member shall have the right to vote that number of shares which is equal to a fraction of the total shares owned by the Tribe. The fraction is calculated by dividing the total number of shares owned by the Tribe by the number of Tribal Council members holding such office at the date on which the vote is taken. Each member of the Tribal Council shall enjoy such voting rights in the corporation as is provided by the Constitution and bylaws of the Tribe to such person as a member of the Tribal Council. Such voting rights shall be enjoyed for as long as such council member remains a duly elected member of the Tribal Council. In voting the shares of a corporation wholly owned by the Tribe, the

members of the Tribal Council are acting not in a personal capacity but in a representative capacity on behalf of the Tribe itself.

Subdivision 4. Proxies illegal. Section 11-449 shall not apply to any corporation wholly owned, directly or indirectly, by the Tribe. Any proxy given for the voting of shares in a corporation wholly owned, directly or indirectly, by the Tribe shall be void and unenforceable.

Subdivision 5. Voting trusts illegal. Section 11-453 shall not apply to any corporation wholly owned, directly or indirectly, by the Tribe. Any voting trust agreement for any interest held in a corporation wholly owned by the Tribe shall be void and unenforceable.

Subdivision 6. Shareholder control agreements illegal. Section 11-457 shall not apply to any corporation wholly owned, directly or indirectly, by the Tribe. Any shareholder control agreement for any interest held in a corporation wholly owned, directly or indirectly, by the Tribe shall be void and unenforceable.

Subdivision 7. No cumulative voting. Section 11-215 shall not apply to any corporation wholly owned, directly or indirectly, by the Tribe. [TCR 94-124]

11-1022 Liability of Tribe as shareholder. Neither the Tribe nor any member of the Tribal Council shall be under any obligation to a corporation wholly owned, directly or indirectly, by the Tribe or to the creditors of any such corporation and the Tribe shall not be deemed to have waived any of the Tribe's privileges or immunities if the Tribe incorporates, owns or operates a corporation, directly or indirectly. [TCR 94-124]

11-1022 Shareholder meetings.

Subdivision 1. Annual meeting. Annual meetings of the Tribal Council, in its capacity as the shareholders of a corporation wholly owned, directly, by the Tribe, shall be held at such time and at such place on the Reservation as the board of directors shall determine. If the board of directors fails to set the time and date of meeting, it shall be held on the second Tuesday in January of each year. At such annual meeting, the Tribal Council, in its capacity as the shareholders of the corporation, shall transact such business as may properly be brought before the meeting. Such meetings may be called and held in the same manner as applicable law provides for meetings of the Tribal Council.

Subdivision 2. Special meetings. Special meeting of the Tribal Council, in its capacity as the shareholders of the corporation, may be called and held for any purpose in the manner provided for the call and holding of special meetings of the Tribal Council.

Subdivision 3. Notice of meetings. The board of directors shall notify the Tribal Council of the date, time and place of the annual meeting of shareholders at least 20 days before the meeting and of any special meeting of the shareholders at least five days before the meeting. Notices shall be deemed to be effective if placed in the U.S. Mail, with proper first class postage affixed, at least 22 days (but not more than 62 days) prior to an annual meeting, and at least 7 days (but not more than 62 days) prior to a special meeting, or on the date personally delivered to the Secretary of the Tribal Council.

Subdivision 4. Time and place or shareholders' meetings. Meetings of the shareholders of the corporation shall be held at the principal place of business or of the corporation or at such other location within the Winnebago Nebraska Reservation at such time and place as the board of directors shall fix.

Subdivision 5. Manner of meeting. Except as otherwise provided in these Articles, the shareholders of the corporation may conduct regular or special meetings through the use of any means and procedures which are proper for meetings of the Tribal Council.

Subdivision 6. Presiding officer. The Chairman of the Tribal Council shall preside over any shareholders' meeting. [TCR 94-124]

11-1030 Assets; distribution of income.

Subdivision 1. Assets. Subject to the contractual and sovereign rights of others, including the Tribe, the corporation shall have as its corporate assets, and the authority to acquire, manage, own, use, pledge, encumber, or otherwise dispose of, the following:

a. all funds which the corporation may acquire by subscription, grant, gift, loan or other means,
b. all interests in real and personal property, whether of a tangible or intangible nature, which the corporation may acquire by subscription, grant, gift, loan, purchase, lease or other means, and
c. all earnings, interest, dividends, accumulations, contract rights, claims and other proceeds arising from any of the foregoing.

Subdivision 2. Distribution of net income to Tribe required. All or that portion of the net income of a corporation wholly owned, directly, by the Tribe shall be distributed to the Tribe at such time as the Tribal Council may determine. The net income of any wholly owned subsidiary of such a corporation and the corporation's share of the net income of any subsidiary of such a corporation, shall be determined in accordance with generally accepted accounting principles. Upon request of the Tribal Council, the board of directors of a corporation wholly owned, directly, by the Tribe will, if the corporation controls a subsidiary, cause the subsidiary to distribute to the corporation all or such portion of the net income of the subsidiary as may be requested by the Tribal Council. [TCR 94-124]

11-1091 Voluntary dissolution by incorporators. A corporation wholly owned, directly, by the Tribe with no shares having been issued may be dissolved by a resolution adopted by the incorporators, or if a board of directors has been appointed or elected, by the board of directors and separately concurred in by a majority of the members of the Tribal Council. [TCR 94-124]

TITLE 11
ARTICLE 11
EFFECTIVE DATE AND AUTHORITY

11-1101 Severability; effect of invalidity of part of this Code.
11-1111 Effective date.
11-1113 Authority.
11-1117 No impairment of contracts.

11-1101 Severability; effect of invalidity of part of this Code. If the Court shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section, article or part of this Code, such judgment or decree shall not affect, impair, invalidate or nullify the remainder of this Code, but the effect thereof shall be confined to the clause, sentence, paragraph, section, article or part of this Code as adjudged to be invalid or unconstitutional. [TCR 94-124]

11-1111 Effective date. This Code shall be in full force and effect according to its terms from and after September 15, 1994. [TCR 94-124]

11-1113 Authority. This Code is enacted by the Winnebago Tribe of Nebraska Tribal Council under the authority vested in the Tribal Council by Article IV, Section 1, clauses (e), (i), (n) and (o) of the Constitution and Bylaws of the Winnebago Tribe of Nebraska, as amended. The Tribal Council reserves the right to repeal or amend the provisions of this Code, subject to the limitation of Section 11-1117. [TCR 94-124]

11-1117 No impairment of contracts. Otherwise lawful contracts and other obligations of any corporation shall not be impaired by any subsequent action of the Tribe or the Tribal Council. Actions to restrain any attempts to impair contracts of Tribal corporations, or to declare such actions null and void, shall be available to any interested party in Court. Nothing in this Section shall be construed to restrict the general application of law, or of this Code, to the acts and contracts of Tribal corporations. [TCR 94-124]

TITLE 11
ARTICLE 12
CONVERSION
(As adopted March 30, 2015)

11-1201 Definitions.
11-1202 Conversion.
11-1203 Conversion of Domestic Corporation into Another Business Entity.
11-1204 Plan of Conversion for Domestic Corporation into Another Business Entity.
11-1205 Filing of Certificate of Conversion for Domestic Corporation Converting into Another Business Entity.
11-1206 Effect of Conversion of Domestic Corporation into Another Business Entity.
11-1207 Conversion of Business Entity into a Domestic Corporation.
11-1208 Plan of Conversion for Business Entity into a Domestic Corporation.
11-1209 Effect of Conversion of Business Entity into Domestic Corporation.
11-1210 Articles of Entity Conversion.
11-1211 Surrender of Charter Upon Conversion.
11-1212 Articles Not Exclusive.

11-1201 Definitions.

1. "Business Entity" in this Article means a Domestic Business Entity and a Foreign Business Entity.
2. "Domestic Business Entity" means a Corporation, incorporated under the laws of the Winnebago Tribe of Nebraska; a Domestic limited liability company, organized under the laws of the Winnebago Tribe of Nebraska; a tribally-charted entity of the Tribe, an unincorporated cooperative of the Tribe; a Section 17 Corporation owned by the Tribe; or other tribally-formed entity, that is party to the merger.
3. "Foreign Business Entity" means a Foreign Limited Liability Company; a Foreign Limited Partnership, or a Foreign Corporation. [TCR15-68]

11-1202 Conversion.

1. Unless otherwise provided in its Organizational Documents, a Domestic Corporation may convert to another form of Business Entity if it:
   a. Follows the procedures and requirements under this Article relating to conversions; and
   b. If the conversion is permitted under the applicable law of the jurisdiction that governs the organization of the Business Entity into which the Domestic Corporation is converting.
2. Unless otherwise provided in its Organizational Documents, a Business Entity other than a Domestic Corporation may convert into a Domestic Corporation if it:
   a. Follows the procedures and requirements under this Article relating to conversions; and
   b. If the conversion is permitted under the applicable law of the jurisdiction that governs the Business Entity.
3. The filing requirements of Section 11-111 apply to conversions under this Article.
4. Notwithstanding its prior approval, a plan of conversion under this Article may be amended before the conversion takes effect if the amendment is approved by the shareholders of the converting Domestic Corporation or Business Entity in the same manner as was required for the approval of the original plan of conversion. [TCR 15-68]

11-1203 Conversion of Domestic Corporation into Another Business Entity.

A Domestic Corporation may convert into another Business Entity if all of the requirements of 11-1204 and 11-1205 are satisfied. [TCR 15-68]

11-1204 Plan of Conversion for Domestic Corporation into another Business Entity.

1. Unless subsection (3) applies, the Domestic Corporation proposing to convert shall adopt a plan of conversion that includes all of the following:
    a. The name of the Domestic Corporation, the name of the Business Entity into which the Domestic Corporation is converting, the type of Business Entity into which the Domestic Corporation is converting, identification of the statute that will govern the internal affairs of the surviving Business Entity, the street address of the surviving Business Entity, the street address of the Domestic Corporation if different from the street address of the surviving Business Entity, and the principal place of business of the surviving Business Entity.
    b. The terms and conditions of the proposed conversion, including the manner and basis of converting the shares of the Domestic Corporation following its conversion into interests or other securities, obligations, rights to acquire interests or other securities, cash, other property, or any combination of the foregoing; and
    c. The terms and conditions of the Organizational Documents that are to govern the surviving Business Entity.
    d. Any other provisions with respect to the proposed conversion that the Domestic Corporation considers as necessary or desirable.
2. A unanimous vote of the shareholders of the Domestic Corporation entitled to vote is required to adopt a plan of conversion under subsection (1), unless its Operating Agreement provides otherwise.
3. If the Domestic Corporation has not commenced business; has not issued any shareholder interests; has no debts or other liabilities; and has not received any payments, or has returned any payments it has received after deducting any amount disbursed for payment of expenses, for subscriptions for its ownership interests, subsections (1) and (2) do not apply and the shareholders of the Domestic Corporation, may approve of the conversion of the Domestic Corporation into another Business Entity by majority vote. To effect the conversion, a majority of the Shareholders must execute and file a certificate of conversion under 11-1205. [TCR 15-68]

11-1205 Filing of Certificate of Conversion for Domestic Corporation Converting into Another Business Entity.

If the plan of conversion is approved under 11-1204(2), the Domestic Corporation shall file any formation documents required to be filed under the laws governing the internal affairs of the surviving Business Entity, in the manner prescribed by those laws, and shall file a certificate of conversion with the Tribal Secretary. The certificate of conversion shall include all of the following:

1. Unless 11-1204(3) applies, a copy of the plan of conversion.
2. The name of the Domestic Corporation that is converting into another Business Entity.
3. The type of Business Entity the Domestic Corporation is converting into and the jurisdiction under which the surviving Business Entity shall be governed.

4. A statement that the Shareholders of the Domestic Corporation have adopted the plan of conversion under 11-1204(2), or that the Shareholders of the Domestic Corporation have approved of the conversion under 11-1204(3), as applicable.
5. A statement that the surviving Business Entity will furnish a copy of the plan of conversion, on request and without cost, to any Shareholder of the Domestic Corporation.
6. The registered agent and registered office, of the Domestic Corporation before and after conversion.
7. A statement whether the Domestic Corporation is Tribally-Owned. [TCR 15-68]

11-1206 Effect of Conversion of Domestic Corporation into Another Business Entity.

When a conversion from a Domestic Corporation into another Business Entity takes effect, all of the following apply:

1. The Domestic Corporation converts into the surviving Business Entity, and the Organizational Documents of the Domestic Corporation are canceled.
2. Except as otherwise provided in this Code, the surviving Business Entity is organized under and subject to the organizational laws of the jurisdiction of the surviving Business Entity as stated in the Certificate of Conversion.
3. The surviving Business Entity has all of the liabilities of the Domestic Corporation. The conversion of the Domestic Corporation into a Business Entity under this Section shall not be considered to affect any obligations or liabilities of the Domestic Corporation incurred before the conversion or the personal liability of any person incurred before the conversion to the extent it would not impair the sovereign immunity of the surviving Business Entity should it become a tribally-owned Business Entity, and the conversion shall not be considered to affect the choice of law applicable to the Domestic Corporation with respect to matters arising before the conversion.
4. An action or proceeding pending by or against the converting entity may be continued by or against the surviving Business Entity as if the conversion has not occurred to the extent it would not impair the sovereign immunity of the Business Entity should it become a tribally-owned Business Entity;
5. The title to all real and personal property, both tangible and intangible, and rights owned by the Domestic Corporation remain vested in the surviving Business Entity, once converted without reversion or impairment.
6. The surviving Business Entity is considered to be the same entity that existed before the conversion and is considered to be organized on the date that the Domestic Corporation was originally organized.
7. The shareholder interests of the Domestic Corporation that were to be converted into ownership interest or obligations of the surviving Business Entity or into cash or other property are converted.
8. Unless otherwise provided in the plan of conversion, the Domestic Corporation is not required to wind up its affairs or pay its liabilities and distribute its assets on account of the conversion, and the conversion does not constitute dissolution of the Domestic Corporation.
9. The Organizational Documents of the surviving Business Entity are as provided in the plan of conversion.
10. All other provisions of the plan of conversion apply. [TCR 15-68]

11-1207 Conversion of Business Entity into a Domestic Corporation.

A Business Entity may convert into a Domestic Corporation if all of the requirements of 11-1208 through 11-1211 are satisfied. [TCR 15-68]

11-1208 Plan of Conversion Business Entity into a Domestic Corporation.

1. A Business Entity proposing to convert into a Domestic Corporation shall adopt a plan of conversion that includes all of the following:
   a. The name of the Business Entity, the type of Business Entity that is converting, identification of the statute that governs the internal affairs of the Business Entity, the name of the surviving Domestic Corporation into which the Business Entity is converting, the street address of the surviving Domestic Corporation, the street address of the Business Entity if different from the street address of the surviving Domestic Corporation, and the principal place of business of the surviving Domestic Corporation.
   b. The terms and conditions of the proposed conversion, including the manner and basis of converting the ownership interests of the Business Entity into shares of the Domestic Corporation following its conversion into interests or other securities, obligations, rights to acquire interests or other securities, cash, other property, or any combination of the foregoing; and
   c. The terms and conditions of the Organizational Documents that are to govern the surviving Domestic Corporation.
   d. Any other provisions with respect to the proposed conversion that the Business Entity considers as necessary or desirable.
2. If a plan of conversion is adopted by the Business Entity under subsection (1), the plan of conversion is submitted for approval in the manner required by the law governing the internal affairs of that Business Entity.
3. If the plan of conversion is approved under subsections (1) and (2), the Business Entity shall file a Certificate of Conversion with the Tribal Secretary. The Certificate of Conversion shall include all of the following:
   a. A copy of the plan of conversion.
   b. A statement that the Business Entity has obtained approval of the plan of conversion under subsection (2).
   c. A statement that the surviving Domestic Corporation will furnish a copy of the plan of conversion, on request and without cost, to any Owner of the Business Entity.
   d. The registered agent and registered office, record agent and record office, or other similar agent and office of the surviving Domestic Corporation before and after conversion.
   e. The type of Business Entity and the date and location of jurisdiction where the Business Entity was formed prior to converting into a Domestic Corporation.
   f. A statement whether the surviving Domestic Corporation is Tribally-Owned.
   g. Submission of Articles of Incorporation for the surviving Domestic Corporation that meet all of the requirements of this Code. [TCR 15-68]

11-1209 Effect of Conversion of Business Entity into Domestic Corporation.

When a conversion of a Business Entity into a Domestic Corporation takes effect, all of the following apply:

1. The Business Entity converts into the surviving Domestic Corporation. Except as otherwise provided in this Section, the surviving Domestic Corporation is organized under and subject to this Code.
2. The surviving Domestic Corporation has all of the liabilities of the Business Entity. The conversion of the Business Entity into a Domestic Corporation under this Section shall not be considered to affect any obligations or liabilities of the Business Entity incurred before the

conversion or the personal liability of any person incurred before the conversion to the extent it would not impair the sovereign immunity of the surviving Domestic Corporation should it become a tribally-owned Domestic Corporation, and the conversion shall not be considered to affect the choice of law applicable to the Business Entity with respect to matters arising before conversion.

3. An action or proceeding pending by or against the converting entity may be continued by or against the surviving Domestic Corporation as if the conversion has not occurred to the extent it would not impair the sovereign immunity of the Domestic Corporation should it become a tribally-owned Business Entity.
4. The title to all real and personal property, both tangible and intangible, and rights owned by the Business Entity remain vested in the surviving Domestic Corporation, once converted without reversion or impairment.
5. The surviving Domestic Corporation is considered to be the same entity that existed before the conversion and is considered to be organized on the date that the Business Entity was originally organized.
6. The ownership interests of the Business Entity that were to be converted into ownership interests or obligations of the surviving Domestic Corporation or into cash or other property are converted.
7. Unless otherwise provided in a plan of conversion, the Business Entity is not required to wind up its affairs or pay its liabilities and distribute its assets on account of the conversion, and the conversion does not constitute a dissolution of the Business Entity.
8. The Organizational Documents of the Domestic Corporation are as provided in the plan of conversion.
9. All other provisions of the plan of conversion apply. [TCR 15-68]

11-1210 Articles of Entity Conversion.

1. After the conversion of a domestic corporation to a domestic Business Entity has been adopted and approved as required by this Act, articles of entity conversion shall be executed on behalf of the Domestic Corporation by any officer or other duly authorized representative. The articles shall:
   a. set forth the name of the corporation immediately before the filing of the articles of entity conversion and the name to which the name of the corporation is to be changed, which shall be a name that satisfies the laws of the Winnebago Tribe of Nebraska;
   b. state the type of Business Entity that the surviving entity will be;
   c. set forth a statement that the plan of entity conversion was duly approved by the shareholders in the manner required by this Act and the articles of incorporation;
   d. if the surviving entity is a filing entity, either contain all of the provisions required to be set forth in its public organic document and any other desired provisions that are permitted, or have attached a public organic document; except that, in either case, provisions that would not be required to be included in a restated public organic document may be omitted.
2. After the conversion of a Domestic Business Entity to a Domestic Corporation has been adopted and approved as required by the laws of the Winnebago Tribe of Nebraska, articles of entity conversion shall be executed on behalf of the Domestic Business Entity by any officer or other duly authorized representative. The articles shall:
   a. set forth the name of the Business Entity immediately before the filing of the articles of entity conversion and the name to which the name of the Business Entity is to be changed, which shall be a name that satisfies the requirements of section 11-115;
   b. set forth a statement that the plan of entity conversion was duly approved in accordance with the organic law of the Business Entity;
   c. either contain all of the provisions that section 11-111(1) requires to be set forth in articles of incorporation and any other desired provisions that section 11-111(4) permits to be

included in articles of incorporation, or have attached articles of incorporation; except that, in either case, provisions that would not be required to be included in restated articles of incorporation of a Domestic Corporation may be omitted.

3. After the conversion of a Foreign Business Entity to a Domestic Corporation has been authorized as required by the laws of the foreign jurisdiction, articles of entity conversion shall be executed on behalf of the Foreign Business Entity by any officer or other duly authorized representative. The articles shall:
   a. set forth the name of the Business Entity immediately before the filing of the articles of entity conversion and the name to which the name of the Business Entity is to be changed, which shall be a name that satisfies the requirements of section 11-115;
   b. set forth the jurisdiction under the laws of which the Business Entity was organized immediately before the filing of the articles of entity conversion and the date on which the Business Entity was organized in that jurisdiction;
   c. set forth a statement that the conversion of the Business Entity was duly approved in the manner required by its jurisdiction; and
   d. either contain all of the provisions that section 11-111(1) requires to be set forth in articles of incorporation and any other desired provisions that section 11-111(4) permits to be included in articles of incorporation, or have attached articles of incorporation; except that, in either case, provisions that would not be required to be included in restated articles of incorporation of a Domestic Corporation may be omitted.
4. The articles of entity conversion shall be delivered to the Tribal Secretary for filing, and shall take effect at the effective time provided in Section 11-153. [TCR 15-68]

11-1211 Surrender of Charter Upon Conversion.

1. Whenever a Domestic Corporation has adopted and approved, in the manner required by this subchapter, a plan of entity conversion providing for the corporation to be converted to a foreign Business Entity, articles of charter surrender shall be executed on behalf of the corporation by any officer or other duly authorized representative. The articles of charter surrender shall set forth:
   a. the name of the corporation;
   b. a statement that the articles of charter surrender are being filed in connection with the conversion of the corporation to a foreign Business Entity;
   c. a statement that the conversion was duly approved by the shareholders in the manner required by this Act and the articles of incorporation;
   d. the jurisdiction under the laws of which the surviving entity will be organized;
   e. if the surviving entity will be a nonfiling entity, the address of its executive office immediately after the conversion.
2. The articles of charter surrender shall be delivered by the corporation to the Tribal Secretary for filing. The articles of charter surrender shall take effect on the effective time provided in section 11-153. [TCR15-68]

11-1212 Article not exclusive.

Article 12 does not preclude an entity from being converted under law other than the Winnebago Tribe of Nebraska Business Corporations Code. [TCR 15-68]

TITLE 11
ARTICLE 13
DOMESTICATION
(As adopted March 30, 2015)

11-1301	Domestication.	11-1305	Effect of Domestication.
11-1301	Action on a Plan of Domestication.	11-1306	Abandonment of Domestication.
11-1303	Articles of Domestication.	11-1307	Article not exclusive.
11-1304	Surrender of Charter Upon Domestication.		

11-1301 Domestication.

1. A Foreign Corporation may become a Domestic Corporation only if the domestication is permitted by the organic law of the Foreign Corporation.
2. A Domestic Corporation may become a Foreign Corporation if the domestication is permitted by the laws of the foreign jurisdiction. Regardless of whether the laws of the foreign jurisdiction require the adoption of a plan of domestication, the domestication shall be approved by the adoption by the corporation of a plan of domestication in the manner provided in this subchapter.
3. The plan of domestication must include:
   a. a statement of the jurisdiction in which the corporation is to be domesticated;
   b. the terms and conditions of the domestication;
   c. the manner and basis of reclassifying the shares of the corporation following its domestication into shares or other securities, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing; and
   d. any desired amendments to the articles of incorporation of the corporation following its domestication.
4. The plan of domestication may also include a provision that the plan may be amended prior to filing the document required by the laws of this state or the other jurisdiction to consummate the domestication, except that subsequent to approval of the plan by the shareholders the plan may not be amended to change:
   a. the amount or kind of shares or other securities, obligations, rights to acquire shares or other securities, cash, or other property to be received by the shareholders under the plan;
   b. the articles of incorporation as they will be in effect immediately following the domestication; or
   c. any of the other terms or conditions of the plan if the change would adversely affect any of the shareholders in any material respect.
5. If any debt security, note or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred or executed by a Domestic Corporation before [the effective date of this subchapter] contains a provision applying to a merger of the corporation and the document does not refer to a domestication of the corporation, the provision shall be deemed to apply to a domestication of the corporation until such time as the provision is amended subsequent to that date. [TCR 15-68]

11-1302 Action on a Plan of Domestication.

In the case of a domestication of a Domestic Corporation in a foreign jurisdiction:

1. The plan of domestication must be adopted by the board of directors.
2. After adopting the plan of domestication the board of directors must submit the plan to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the plan, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors must transmit to the shareholders the basis for that determination.
3. The board of directors may condition its submission of the plan of domestication to the shareholders on any basis.
4. If the approval of the shareholders is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan of domestication is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. The notice shall include or be accompanied by a copy of the articles of incorporation as they will be in effect immediately after the domestication.
5. Unless the articles of incorporation, or the board of directors acting pursuant to paragraph (3), requires a greater vote or a greater number of votes to be present, approval of the plan of domestication requires the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the plan exists, and, if any class or series of shares is entitled to vote as a separate group on the plan, the approval of each such separate voting group at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the domestication by that voting group exists.
6. Separate voting by voting groups is required by each class or series of shares that:
   a. are to be reclassified under the plan of domestication into other securities, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing;
   b. would be entitled to vote as a separate group on a provision of the plan that, if contained in a proposed amendment to articles of incorporation, would require action by separate voting groups under Section 11-137; or
   c. is entitled under the articles of incorporation to vote as a voting group to approve an amendment of the articles.
7. If any provision of the articles of incorporation, bylaws or an agreement to which any of the directors or shareholders are parties, adopted or entered into before [the effective date of this subchapter], applies to a merger of the corporation and that document does not refer to a domestication of the corporation, the provision shall be deemed to apply to a domestication of the corporation until such time as the provision is amended subsequent to that date. [TCR 15-68]

11-1303 Articles of Domestication.

1. After the domestication of a Foreign Corporation has been authorized as required by the laws of the foreign jurisdiction, articles of domestication shall be executed by any officer or other duly authorized representative. The articles shall set forth:
   a. the name of the corporation immediately before the filing of the articles of domestication and, if that name is unavailable for use in this state or the corporation desires to change its name in connection with the domestication, a name that satisfies the requirements of Section 11-115;
   b. the jurisdiction of incorporation of the corporation immediately before the filing of the articles of domestication and the date the corporation was incorporated in that jurisdiction; and

c. a statement that the domestication of the corporation under the laws of the Winnebago Tribe of Nebraska was duly authorized as required by the laws of the jurisdiction in which the corporation was incorporated immediately before its domestication under the laws of the Winnebago Tribe of Nebraska.

2. The articles of domestication shall either contain all of the provisions that Section 11-111(1) requires to be set forth in articles of incorporation and any other desired provisions that Section 11-111(4) permits to be included in articles of incorporation, or shall have attached articles of incorporation. In either case, provisions that would not be required to be included in restated articles of incorporation may be omitted.

3. The articles of domestication shall be delivered to the Tribal Secretary for filing, and shall take effect at the effective time provided in Section 11-153. [TCR 15-68]

11-1304 Surrender of Charter Upon Domestication.

1. Whenever a Domestic Corporation has adopted and approved, in the manner required by this subchapter, a plan of domestication providing for the corporation to be domesticated in a foreign jurisdiction, articles of charter surrender shall be executed on behalf of the corporation by any officer or other duly authorized representative. The articles of charter surrender shall set forth:
   a. The name of the corporation;
   b. A statement that the articles of charter surrender are being filed in connection with the domestication of the corporation in a foreign jurisdiction;
   c. A statement that the domestication was duly approved by the shareholders and, if voting by any separate voting group was required, by each such separate voting group, in the manner required by this Act and the articles of incorporation;
   d. The corporation's new jurisdiction of incorporation.
2. The articles of charter surrender shall be delivered by the corporation to the Tribal Secretary for filing. The articles of charter surrender shall take effect on the effective time provided in Section 11-153. [TCR 15-68]

11-1305 Effect of Domestication.

1. When a domestication becomes effective:
   a. The corporation is deemed to:
      i. Be incorporated under and subject to the organic law of the domesticated corporation for all purposes;
      ii. Be the same corporation without interruption as the domesticating corporation; and
      iii. Have been incorporated on the date the domesticating corporation was originally incorporated.
   b. The title to all real and personal property, both tangible and intangible, of the corporation remains in the corporation once domesticated, without reversion or impairment;
   c. All debts, obligations, or other liabilities of the domesticating corporation continue as debts, obligations, or other liabilities of the domesticated corporation to the extent it would not impair the sovereign immunity of the domesticating corporation should it become a tribally-owned corporation;
   d. An action or proceeding pending by or against a domesticating corporation may be continued as if the domestication had not occurred to the extent it would not impair the sovereign immunity of the domesticating corporation should it become a tribally-owned corporation;

e. The articles of domestication, or the articles of incorporation attached to the articles of domestication, constitute the articles of incorporation of a Foreign Corporation domesticating in this state;

f. The shares of the corporation are reclassified into shares, other securities, obligations, rights to acquire shares or other securities, or into cash or other property in accordance with the terms of the domestication, and the shareholders are entitled only to the rights provided by those terms and to any appraisal rights they may have under the organic law of the domesticating corporation; and

2. When a domestication of a Domestic Corporation in a foreign jurisdiction becomes effective, the Foreign Corporation is deemed to appoint the Tribal Secretary as its agent for service of process in a proceeding to enforce the rights of shareholders who exercise appraisal rights in connection with the domestication.

3. The owner liability of a shareholder in a Foreign Corporation that is domesticated in this jurisdiction shall be as follows:

a. The domestication does not discharge any owner liability under the laws of the foreign jurisdiction to the extent any such owner liability arose before the effective time of the articles of domestication.

b. The shareholder shall not have owner liability under the laws of the foreign jurisdiction for any debt, obligation or liability of the corporation that arises after the effective time of the articles of domestication.

c. The provisions of the laws of the foreign jurisdiction shall continue to apply to the collection or discharge of any owner liability preserved by paragraph (1), as if the domestication had not occurred.

d. The shareholder shall have whatever rights of contribution from other shareholders are provided by the laws of the foreign jurisdiction with respect to any owner liability preserved by paragraph (1), as if the domestication had not occurred. [TCR 15-68]

11-1306 Abandonment of a Domestication.

1. Unless otherwise provided in a plan of domestication of a Domestic Corporation, after the plan has been adopted and approved as required by this subchapter, and at any time before the domestication has become effective, it may be abandoned by the board of directors without action by the shareholders.

2. If a domestication is abandoned under subsection (1) after articles of charter surrender have been filed with the Tribal Secretary but before the domestication has become effective, a statement that the domestication has been abandoned in accordance with this section, executed by an officer or other duly authorized representative, shall be delivered to the Tribal Secretary for filing prior to the effective date of the domestication. The statement shall take effect upon filing and the domestication shall be deemed abandoned and shall not become effective.

3. If the domestication of a Foreign Corporation in this state is abandoned in accordance with the laws of the foreign jurisdiction after articles of domestication have been filed with the Tribal Secretary, a statement that the domestication has been abandoned, executed by an officer or other duly authorized representative, shall be delivered to the Tribal Secretary for filing. The statement shall take effect upon filing and the domestication shall be deemed abandoned and shall not become effective. [TCR 15-68]

11-1307 Article not exclusive.

Article 13 does not preclude an entity from being domesticated under law other than the Winnebago Tribe of Nebraska Business Corporations Code. [TCR 15-68]

TITLE 11A
BUSINESS REGULATION AND ECONOMIC DEVELOPMENT

SUMMARY OF CONTENTS

SECTION	ARTICLE-PAGE
1. TABLE OF REVISIONS	ii
2. TABLE OF CONTENTS	iii
3. ARTICLE 2: WINNEBAGO INDUSTRIAL DEVELOPMENT FINANCING	2-1
• UTILIZATION OF FINANCING SERVICE IN INDUSTRIAL DEVELOPMENT	2-11
4. ARTICLE 3: WINNEBAGO ECONOMIC DEVELOPMENT ACT OF 1989	3-1
• GENERAL PROVISIONS	3-1
• BOARD OF TRUSTEES	3-6
• POWERS OF THE AUTHORITY	3-9
• OBLIGATIONS	3-13
• MISCELLANEOUS PROVISIONS	3-16
• MANAGEMENT OF TRIBAL ENTERPRISES	3-19

TITLE 11A
TABLE OF REVISIONS

The following table is included in this title as a guide for determining whether each article properly reflects the current version. This table will be updated with the revision of each article.

Through usage and supplementation, pages in bound titles can be inserted and removed when sections are revised on an article-by-article basis. This table should be placed before the Table of Contents in the title.

The "Article" column lists each article, and the "Section" column lists any corresponding sections that have been revised, in sequence. The "Revised Date" column reflects the effective date of the revision (e.g., "6/20/15"). If an article is not listed in the table, it has not been revised since the December 2015 Winnebago Tribal Code update and distribution.

Article	**Section**	**Revised Date**

TITLE 11A
BUSINESS REGULATION AND ECONOMIC DEVELOPMENT

ARTICLE 2
WINNEBAGO INDUSTRIAL DEVELOPMENT FINANCING SERVICE ACT
(As redesignated March 9, 1994)

11A-201 Citation and special definition.
11A-202 Establishment and purpose of the Winnebago Industrial Development Financing Service.
11A-203 Tribal credit officer to operate service, business of Industrial Development Financing Service.
11A-204 Federal Deposit Insurance Corporation Act.
11A-205 Pledge of assets generally.
11A-206 Indemnification for defending suits.
11A-207 Property acquisition.
11A-208 Engagement of officers and employees.
11A-209 Removal and discharge of appointees.
11A-210 Capital of Industrial Development Financing Service.
11A-211 Tribal funds to be deposited in the Winnebago Industrial Development Financing Service.
11A-212 Non-liability of officers and sureties after deposit.
11A-213 Deposits may be received from any source.
11A-214 Deposits to credit of other financing services.
11A-215 Guaranty of deposits-exemption from taxation.
11A-216 Interest rates; time deposits; limitations; charges.
11A-217 Deposits may be made in any bank.
11A-218 Financing service may make loans.
11A-219 Loans to treasury account authorized.
11A-220 Investments in government sponsored stocks.
11A-221 Fund transfers to Tribal departments; how credited.
11A-222 Warrants against transferred funds.
11A-223 Assignment patents and sales of land acquired through foreclosure.
11A-224 Name in which business conducted; execution of industrial instruments.
11A-225 Civil actions against financing service.
11A-226 Surety not required for financing service in civil actions.
11A-227 No execution of financing service property.
11A-228 Audit of financing service accounts and records.
11A-229 Indian Financing Act authorization.

UTILIZATION OF FINANCING SERVICE IN INDUSTRIAL DEVELOPMENT

11A-230 Declaration and finding of public purpose.
11A-231 Financing service advisory board.
11A-232 Authority of board; capital pool created.
11A-233 Minimum standards for loans from capital pool.
11A-234 Mortgage program administration.
11A-235 Purpose.
11A-236 Definitions.
11A-237 Powers.
11A-238 Default by mortgagors.
11A-239 Mortgage insurance fund.
11A-240 Insurance of mortgages.
11A-241 Mortgage insurance premiums.
11A-242 Expenses.
11A-243 Mortgages eligible for investment.
11A-244 Limitation; credit of financing service and Tribe not pledged.

TITLE 11A
ARTICLE 3
WINNEBAGO ECONOMIC DEVELOPMENT ACT OF 1989
(As redesignated March 9, 1994)

GENERAL PROVISIONS

11A-301 Citation.
11A-302 Declaration of need and legislative findings.
11A-303 Purposes.
11A-304 Definitions.

BOARD OF TRUSTEES

11A-305 Economic development authority created.
11A-306 Board created; number.
11A-307 Appointment of board members.
11A-308 Qualifications of board members.
11A-309 Term of office.
11A-310 Officers.
11A-311 Removal of board members.
11A-312 Compensation to be paid.
11A-313 Quorum.
11A-314 Duties of officers.
11A-315 Meetings.

POWERS OF THE AUTHORITY

11A-316 Period of existence.
11A-317 Power to sue and be sued.
11A-318 General powers.
11A-319 Securing financial assistance.
11A-320 Certain property laws do not apply.

OBLIGATIONS

11A-321 Authority to issue obligations.
11A-322 No personal liability on obligations.
11A-323 No Tribal liability on obligations.
11A-324 Obligations are tax exempt.
11A-325 Manner of issuance and sales.
11A-326 Obligations are negotiable.
11A-327 Security for obligations.
11A-328 Actions to be filed for record.

MISCELLANEOUS PROVISIONS

11A-329 Reports.
11A-330 Acquisition of interests prohibited.
11A-331 Compliance with federal law.
11A-332 Fidelity bonds.
11A-333 Property of authority as public property.
11A-334 No execution on authority property.
11A-335 Personal policies to be enacted.
11A-336 Judicial notice.
11A-337 Special certificate of incorporation.
11A-338 Separability of provisions.
11A-339 Records and audit.
11A-340 Authorization of appropriations.
11A-341 Rules, regulations and procedures.
11A-342 General management provisions. enterprises.
11A-343 Achieving independent status as a Tribal enterprise.
11A-344 Chartering of independent Tribal enterprises

TITLE 11A
ARTICLE 2
WINNEBAGO INDUSTRIAL DEVELOPMENT FINANCING SERVICE ACT
(As redesignated March 9, 1994)

11A-201	Citation and special definition.
11A-202	Establishment and purpose of the Winnebago Industrial Development Financing Service.
11A-203	Tribal credit officer to operate service, business of Industrial Development Financing Service.
11A-204	Federal Deposit Insurance Corporation Act.
11A-205	Pledge of assets generally.
11A-206	Indemnification for defending suits.
11A-207	Property acquisition.
11A-208	Engagement of officers and employees.
11A-209	Removal and discharge of appointees.
11A-210	Capital of Industrial Development Financing Service.
11A-211	Tribal funds to be deposited in the Winnebago Industrial Development Financing Service.
11A-212	Non-liability of officers and sureties after deposit.
11A-213	Deposits may be received from any source.
11A-214	Deposits to credit of other financing services.
11A-215	Guaranty of deposits; exemption from taxation.
11A-216	Interest rates; time deposits; limitations; charges.
11A-217	Deposits may be made in any bank.
11A-218	Financing service may make loans.
11A-219	Loans to treasury account authorized.
11A-220	Investments in government sponsored stocks.
11A-221	Fund transfers to Tribal departments; how credited.
11A-222	Warrants against transferred funds.
11A-223	Assignment patents and sales of land acquired through foreclosure.
11A-224	Name in which business conducted; execution of industrial instruments.
11A-225	Civil actions against financing service.
11A-226	Surety not required for financing service in civil actions.
11A-227	No execution of financing service property.
11A-228	Audit of financing service accounts and records.
11A-229	Indian Financing Act authorization.

11A-201 Citation and special definition. This Article may be cited as the Winnebago Industrial Development Financing Service Act of 1988. As used in this Article, the term "reservation" means all Indian country subject to the jurisdiction of the Winnebago Tribe of Nebraska wherever located.

11A-202 Establishment and purpose of the Winnebago Industrial Development Financing Service.

1. Establishment and General Purposes.
   A. It being determined by the Winnebago Tribal Council to be in the public interest, and essential to Tribal self determination, the general welfare, and the provision of essential governmental functions to persons within the jurisdiction of the Tribe, the Winnebago Tribe of Nebraska shall engage in the business of lending, and for that purpose shall maintain a lending system owned, controlled, and operated by it, under the name of the "WINNEBAGO INDUSTRIAL FINANCING SERVICE" which shall be a body corporate and politic, and an essential government agency, of the Winnebago Tribe of Nebraska.
   B. The public need for such financing service is hereby declared as a matter of legislative determination, and such financing service is declared to exercise essential governmental functions of the Winnebago Tribe of Nebraska through its activities encouraging the

creation of a Tribal tax base, the earning of income which can be used to support essential functions of the Tribal government, and the provision of credit through which economic activity can be encouraged, and the effect such activity is intended to have upon the health, welfare, and economic security of the Winnebago Tribe of Nebraska, its members, and other residents of the Tribal jurisdiction.

2. Specified Purposes. In addition to the general purposes expressed in subsection (1) of this Section, the Winnebago Industrial Development Financing Service is intended to be an agency of the Winnebago Tribe of Nebraska and, through its activities, further the general purposes expressed as well as the following specific Tribal and federal purposes:

A. The purpose of encouraging and promoting agriculture, commerce, and industry, for creating a fund to be known as the real estate bond payment and purchase fund, said funds to be used for the acquisition of real property for economic development and other purposes, including the purposes of providing land to landless members of the Winnebago Tribe of Nebraska and other eligible persons, for the provisions of income and the creation of a sound economic and industrial tax base for the support of the government of the Winnebago Tribe of Nebraska as guaranteed to the Winnebago Tribe in the various treaties between the United States and the Winnebago Tribe and the rights of self-government and social advancement recognized and provided by the laws of the United States;

B. The purpose of providing land, borrowing money, and issuing loans for the acquisition of land for the Winnebago Tribe of Nebraska, other Indian Tribes, and individual Indians or groups of Indians pursuant to Section 5 of the Act of June 18, 1934, 48 Stat. 935 (25 U.S.C. Section 465), the insurance of loans for such acquisitions pursuant to the Act of April 11, 1970 (25 U.S.C. Sections 488 et. seq.) and other federal laws providing for the acquisition of land for Indian individuals and Indian tribes, and the providing of federal insurance for loans made to Indian tribes, individuals, or others;

C. The purpose of furthering Indian industry and labor and economic development within the Indian country as provided for in the Act of June 25, 1920, 38 Stat. 861 (25 U.S.C. Section 47), Section I of the of May 9, 1938, 52 Stat. 302 (25 U.S.C. Section 306) and other federal laws supporting the economic development of Indian country;

D. The purpose of furthering the investment of Indian tribal and individual funds as provided in the Act of June 24, 1938, 25 Stat. 1037 (25 U.S.C. Section 162a);

E. The purpose of furthering any necessary irrigation projects within the Winnebago reservation needed to make agricultural land productive to complement the provisions of Chapter 11 of Title 25 of the United States Code;

F. The purpose of providing income and a taxable economic and industrial base in order for the Winnebago Tribe of Nebraska to operate a judicial and law and order system sufficient to meet the requirements of Title II of the Act of April 11, 1968, 82 Stat. 77 (25 U.S.C. Sections 1301 et.seq.);

G. The purpose of providing income and a taxable economic and industrial base in order for the Winnebago Tribe of Nebraska to further the purpose of Congress expressed in Section 2 of the Act of April 12, 1974, 88 Stat. 77 (25 U.S.C. Section 1451), and the balance of said Act. (Indian Financing Act);

H. The purpose of providing income and a taxable economic and industrial base in order for the Winnebago Tribe of Nebraska to further the purpose of Congress expressed in Section 3 of the Act of September 30, 1976, 90 Stat. 1401 (25 U.S.C. Section 1602), and the balance of said Act. (Health Care);

I. The purpose of providing income and a taxable economic and industrial base in order for the Winnebago Tribe of Nebraska to further the purpose of Congress expressed in Section 101 of the Act of October 17, 1978, 92 Stat. 1325 (25 U.S.C. Section 1802) and the balance of said Act. (Higher Education);

J. The purpose of providing income and a taxable economic and industrial base in order for the Winnebago Tribe of Nebraska to further the policy of Congress expressed in Section 3 of the Act of November 8, 1978, 92 Stat. 3069 (25 U.S.C. Section 1902) and the balance of said Act. (Child and Family Service Program);

K. The purpose of providing funds for the further tribal development of Indian-owned mineral resources pursuant to the Act of December 22, 1982, 96 Stat. 1938 (25 U.S.C. Sections 2101 et seq);

L. The purpose of providing funds for Indian Land Consolidation pursuant to the Act of January 12, 1983, 96 Stat. 2517 (25 U.S.C. Sections 201 et. seq.);

M. The purpose of providing income and a taxable economic and industrial base in order for the Winnebago Tribe of Nebraska to further the policy of Congress expressed in the Act of January 4, 1975, 88 Stat. 2206 (25 U.S.C. Sections 450 et. seq.) and particularly in Section 102 of Title I of that Act (25 U.S.C. Section 450f) (Indian Self-Determination) and the Act of November 2,1921, 42 Stat. 208 (25 U.S.C. Section 13) (Snyder Act); and the exercise of each and every essential governmental function reasonably necessary or proper to further such purposes and policies. [TCR 88-77, 90-82]

11A-203 Tribal credit officer to operate service, business of Industrial Development Financing Service. The Winnebago Tribal credit officer shall operate, manage, and control the Winnebago Industrial Development Financing Service, locate and maintain its places of business, of which the principal place shall be within the jurisdiction of the Winnebago Tribe of Nebraska, and make and enforce order, rules, regulations, and bylaws for the transaction of its business. The business of the financing service, in addition to other matters specified in this Article, may include, subject to the rules and regulations of the Tribal credit officer, the power:

1. To continue perpetually as a financing service program within the programs administered by the Tribal credit officer of the Winnebago Tribe of Nebraska;
2. To make contracts in its own name;
3. To bring suit in any court under the title “The Winnebago Tribe of Nebraska ex rel the Winnebago Industrial Development Financing Service”;
4. To have a seal incorporating the official logo of the Winnebago Tribe of Nebraska;
5. To adopt and operate reasonable bonus, profit-sharing, and pension plans for officers and employees;
6. To act as escrow agent;
7. To exercise all such incidental powers as shall be necessary to carry on the banking business; by buying, discounting and negotiating promissory notes, bonds, drafts, bills of exchange, foreign and domestic, and other evidence of debt; by receiving deposits of money upon which interest may or may not be paid; by buying and selling coin and bullion; by buying and selling exchange, foreign and domestic; issuing letters of credit; and by loaning money on personal security or real estate as provided in this Article;
8. To lease, hold, purchase, acquire in any manner, and convey any and all real estate, or any interest therein, to the same extent and in the same manner that a business corporation organized pursuant to the law may deal in real property, or as provided by this Article, and not otherwise;
9. To issue preferred stock in return for actual value received equal to no less than the par value thereof to the same extent that a business corporation organized pursuant to the law may issue preferred stock in order to provide necessary capital for financing service purposes, provided, that such stock shall not be convertible to capital stock, nor shall the financing service issue any capital or common stock, all capital or common stock and full ownership equity being reserved to the Winnebago Tribe of Nebraska. [TCR 88-77]

11A-204 Federal Deposit Insurance Corporation Act. The Winnebago Industrial Development Financing Service may do and perform any act or thing necessary or required under the terms of the Federal Deposit Insurance Corporation Act, and any amendments thereto or any Act substituted therefor, to secure the benefits of the deposit insurance and other advantages provided by such Act, and any amendments thereto or any Act substituted there for applicable to non-federally chartered institutions. [TCR 88-77]

11A-205 Pledge of assets generally. The Winnebago Industrial Development Financing Service may pledge its assets to:

1. Enable it to act as agent for the sale of obligations of the United States;
2. Secure borrowed funds;
3. Secure deposits when the depositor is required to obtain such security by the laws of the United States, by the terms of any intergovernmental cooperative agreement or compact, by the laws of any state or Indian Tribe, or by order of a court of competent jurisdiction;
4. Otherwise comply with the provisions of this Article. [TCR 88-77]

11A-206 Indemnification for defending suits. The lending rules and regulations of the Winnebago Tribal credit officer, for the governance of the financing service, may provide that it shall indemnify every officer, director, and employee, his/her heirs, executors, and administrators, against judgments resulting from and the expenses reasonably incurred by him/her in connection with any action to which he/she may be made a party by reason of his/her being an officer, director or employee of the financing service, including any action based upon any alleged act or omission on his/her part as an Officer, director or employee of the financing service, except in relation to matters as to which he/she shall be finally adjudged in such action to be liable for negligence or his/her willful misconduct, and except that, in the event of a settlement out of court, indemnification shall be provided only in connection with such matters covered by the settlement as to which the financing service is advised by its counsel that the person to be indemnified was not liable for such negligence or misconduct in the professional opinion of counsel for the financing service. The foregoing rights of indemnification shall not be exclusive of other rights to which such officers, directors, and employees may be entitled. [TCR 88-77]

11A-207 Property acquisition. To accomplish the purpose of this Article, the financing service shall have the authority to acquire by purchase, gift, lease, or otherwise by any lawful means all requisite real and personal property and property rights, provided, that the Tribal credit officer shall have the authority to request, and shall request that the United States accept any real property to be acquired by the financing service within the reservation boundaries of the Winnebago Tribe of Nebraska in trust pursuant to 25 U.S.C. Section 465 or other applicable federal law in the name of the Winnebago Tribe of Nebraska. Such real property within the Winnebago reservation, when acquired in trust status or otherwise, shall by force of this Section, be considered as assigned to the sole use and benefit of the Winnebago Industrial Development Financing Service under the appropriate laws of the Winnebago Tribe of Nebraska, and the chairman and secretary shall issue an original assignment of such property endorsed to "The Winnebago Industrial Financing Service for the use and benefit of Winnebago Industrial Development Financing Service." The financing service shall have the authority to acquire by eminent domain the full use title under Tribal law to any land owned by the Winnebago Tribe of Nebraska and assigned to any person other than an agency of the Tribe upon paying the owner of the use thereof the full value of his/her assignment as determined by settlement between the parties or by the courts of the Winnebago Tribe Nebraska. Further, the financing service my construct, remodel, and repair buildings necessary for the purposes of this Article. It shall invest in furniture, fixtures, lands and buildings for office purposes only in accordance with legislative appropriation of the Tribe, or as may be provided for in any grant or contract from a non-tribal funding source approved by the Tribal Council when the grant or contract contains an allocation for such purposes. [TCR 88-77]

11A-208 Engagement of officers and employees. The Winnebago Tribal credit officer may obtain such assistance as in his/her judgment may be necessary for the establishment, maintenance, and operation of the financing service. To that end, he/she may appoint a president, and may appoint subordinate officers and employees as he/she may judge expedient. He/she may constitute such president his/her general agent in respect to the functions of said financing service, but subject nevertheless, in such agency, to the supervision, limitation, and control of the Tribal credit officer. He/she shall employ such contractors, architects, builders, attorneys, cashiers, tellers, clerks, accountants, and other experts, agents, and servants as in the judgment of the Tribal credit officer the interest of the Tribe in the financing service requires, and shall define the duties, designate the titles, and fix the compensation, with legislative appropriation, and the bonds of all such person so engaged. The total compensation of such appointees and employees, together with other expenditures for the operation and maintenance of the financing service, shall remain within the appropriation lawfully available in each year for such purpose. All officers and employees of the financing service engaged upon its financial functions, before entering upon their duties, shall furnish respectively good and sufficient bonds to the Winnebago Tribe of Nebraska in such amount and upon such conditions as the Tribal credit officer may require and approve. [TCR 88-77]

11A-209 Removal and discharge of appointees. The Industrial Development Financing Service may remove and discharge any and all persons appointed in the exercise of the powers granted by this Title and any such removal may be made whenever in the judgment of the Tribal credit officer the public interests require it, and no contract of employment may vary the terms of this Section. All appointments and removals contemplated by this Article shall be made as the Tribal credit officer shall deem fit to promote the efficiency of the public service. [TCR 88-77]

11A-210 Capital of Industrial Development Financing Service. The financing service shall be opened and shall proceed to transact business whenever there shall be delivered to the Tribal credit officer funds in the sum of at least two thousand dollars ($2,000.00) designated for such use by the Winnebago Tribal Council. These funds are hereby designated and shall be known as the capital of said financing service. [TCR 88-77]

11A-211 Tribal funds to be deposited in the Winnebago Industrial Development Financing Service. All Tribal funds, and all funds of Tribal agencies and departments to be invested at interest and not maintained in the treasury of the United States my be deposited in the Winnebago Industrial Development Financing Service by the persons having control of such funds or shall be deposited in accordance with constitutional and statutory provisions. [TCR 88-77]

11A-212 Non-liability of officers and sureties after deposit. Whenever any of the public funds herein before designated shall be deposited in the Winnebago Industrial Development Financing Service, as herein before provided, the official having control thereof and the sureties on the bond of every such official shall be exempt from all liability by reason of loss of any such fund while so deposited.

11A-213 Deposits may be received from any source. The Winnebago Industrial Development Financing Service may receive deposits from any source, including the United States government, and any foreign or domestic individual corporation, association, municipality, bank or government. [TCR 88-77]

11A-214 Deposits to credit of other financing services. Funds may be deposited to the credit of the Winnebago Industrial Development Financing Service in any bank or agency approved by the Tribal credit officer. [TCR 88-77]

11A-215 Guaranty of deposits; exemption from taxation. All deposits in the Winnebago Industrial Development Financing Service are guaranteed by the Winnebago Tribe to the extent of all property, real

or personal held by the Winnebago Industrial Development Financing Service. Such deposits shall be exempt front taxes of the Winnebago Tribe of Nebraska of any and all kinds. [TCR 88-77]

11A-216 Interest rates; time deposits; limitations; charges. The Tribal credit officer, unless otherwise limited by law, from time to time shall fix the rates of interest allowed and received in transactions of the financing service. Such rates shall be as nearly uniform and constant as practicable, and shall not be fixed or changed to work any discrimination against or in favor of any person, corporation, or other depositor or borrower. In respect to time deposits received by the financing service, transactions may be reasonably classified as to the amounts and the duration of time involved, and a reasonable differentiation of interest rates based on such classification may be allowed. When interest is allowed on any deposits the interest rate thereon shall not be more than the amounts allowed by any restriction contained in Tribal law. The Tribal credit officer shall also fix reasonable charges, without unjust discrimination, for any and all services rendered by the financing service. [TCR 88-77]

11A-217 Deposits may be made in any bank. The Winnebago Industrial Development Financing Service may deposit funds in any bank or banking association within or without the Tribal jurisdiction upon such terms and conditions as the Tribal credit officer shall determine. [TCR 88-77]

11A-218 Financing service may make loans.

1. The Winnebago Industrial Development Financing Service may make loans to, and purchase securities issued by Tribal enterprises or instrumentalities of the Winnebago Tribe of Nebraska, and such loans shall be repaid with or without interest to the financing service. The financing service may make loans to Tribal, state, or national banks, and may participate with Tribal, state, or national banks, savings and loan associations, and credit unions, in loans being made by them, on such terms and under such rules and regulations as the Tribal credit officer may determine, provided that the financing service shall not make any venture capital loans and all loans shall be sufficiently secured. The financing service may buy and sell federal funds, or excess reserves, bankers' acceptances, participation loans, and all securities issued by the United States government or its instrumentalities. The Winnebago Industrial Development Financing Service may invest its funds in bonds, notes, or debentures of any corporation incorporated under the laws of any state of the United States, the United States, or any Indian Tribe within the United States rated at "A" or higher by a nationally recognized rating service approved by the Tribal credit officer. The financing service may make loans to holders of the Winnebago Industrial Development Financing Service certificates of deposit and savings accounts, up to ninety percent of the value of the certificates and savings accounts offered as security. The financing service shall not otherwise make loans or give its credit to any individual, association, or private corporation, except as otherwise authorized in this Article, and except that it may make uninsured loans to actual farmers and businesses who conduct a bona fide business within the jurisdiction of the Winnebago Tribe of Nebraska for the expansion and operation of such business within the Tribal jurisdiction in an amount not to exceed eighty-five percent of the value of the security if such loans are secured by recorded mortgages giving the Winnebago Industrial Development Financing Service a first lien on the title or use of real property within the jurisdiction of the Tribal Court, and except that loans insured and guaranteed by the United States as to principle and interest as specifically authorized by law may be made in an amount in which the uninsured principal and interest unpaid on said loan does not exceed fifteen percent of the total unpaid principal and interest of said loan.
2. The limitations imposed by subsection (1) of this Section may be waived in writing by the Tribal Council upon the application of the Tribal credit officer on behalf of the industrial development financing service if, but only if, the loan or investment which would require waiver of any of the stated limitations is fully guaranteed or insured as to both principal and interest by the United

States, a reputable insurance company or similar lender or surety company rated "A" or better by Best Insurance Rating System or similar nationally recognized rating system. Such waivers are not favored, and will be granted only in the most extraordinary circumstances in the sole discretion of the Tribal Council. [TCR 88-77]

11A-219 Loans to treasury account authorized. Upon application by the Tribal treasurer and the director of the Tribal accounting department, the Tribal credit officer may direct the Winnebago Industrial Development Financing Service to make loans in amount at no time exceeding the total sum of one hundred thousand dollars ($100,000.00) to the Tribal treasury account, for periods of time not exceeding nine months in duration, at such rates of interest as the Tribal credit officer may prescribe, for the purpose of making money available to meet legislative appropriations from the treasury account during periods of seasonally low tax collections, periods in which high withdrawals or expenditures occur, or as may be necessary to provide for appropriations to maintain any grant or contract received from the federal government pending draw down of awarded and available grant or contract funds. [TCR 88-77]

11A-220 Investments in government sponsored stocks. The Winnebago Industrial Development Financing Service may invest in stock of United States government or Winnebago Tribal government sponsored corporations or other such enterprises, whether publicly or privately held. [TCR 88-77]

11A-221 Fund transfers to Tribal departments; how credited. All funds transferred by loan to other agencies, political subdivisions, departments, institutions, utilities, industries, enterprises, or projects of the Winnebago Tribe of Nebraska shall be placed to the credit of such agencies, political subdivisions, departments, institutions, utilities, industries, enterprises, or projects by the treasurer and the Tribal accounting office subject to their respective orders within the scope of their approved budgets. [TCR 88-77]

11A-222 Warrants against transferred funds. The department of accounting shall prepare and issue warrants signed by the Tribal accountant against money transferred by the Winnebago Industrial Development Financing Service to other agencies, political subdivisions, department, institutions, utilities, industries, enterprises, or projects of the Tribe in the manner provided for the transfer of funds derived from the payment of taxes or otherwise. [TCR 88-77]

11A-223 Assignment patents and sales of land acquired through foreclosure.

1. All lands acquired by the Winnebago Industrial Development Financing Service by foreclosure of mortgages taken by the Winnebago industrial Development Financing Service shall be either:
   A. With the consent of the United States Secretary of the Interior or his/her authorized agents or representatives, taken in trust by the United States of America for the use and benefit of the Winnebago Tribe of Nebraska pursuant to 25 U.S.C. Section 465, and shall thereafter be patented and assigned to the Winnebago Industrial Development Financing Service pursuant to the Tribal law relating to assignment patents, or, if declared by the financing service with the approval of the Winnebago Tribal Council to be excess to the needs of the financing service due regard being made for the payment of the financing service's obligations, such patent may be withheld and sold as provided in the laws relative to such assignment patents, or
   B. Lands which the United States Secretary of the Interior refuses to accept in trust for the Tribe, if within the exterior boundaries of the Winnebago Indian reservation, shall be taken in the name of the Winnebago Tribe of Nebraska and shall thereafter be patented to the Winnebago Industrial Development Financing Service pursuant to the Tribal law relating to assignment patents, or, if declared by the financing service with the approval of the Winnebago Tribal Council to be excess to the needs of the financing service due

regard being made for the payment of the financing service's obligations, such patent may be withheld and sold as provided in the laws relative to such assignment patents, provided that the Tribal Council may direct that such surplus lands remain Tribal land or be patented to another Tribal agency for public purposes upon payment of the amount due after foreclosure, or

C. Lands which the United States Secretary of the Interior refuses to accept in trust for the Tribe, if without the exterior boundaries of the Winnebago Indian reservation, shall be taken in the name of the Winnebago Tribe of Nebraska and shall thereafter be patented to the Winnebago Industrial Development Financing Service pursuant to the Tribal law relating to assignment patents, or, if declared by the financing service with the approval of the Winnebago Tribal Council to be excess to the needs of the financing service due regard being made for the payment of the financing service's obligations, such patent may be withheld and sold as provided in the laws relative to such assignment patents, or in lieu of issuance of art assignment patent or upon acquisition of the use rights to said property conveyed by Tribal law to the patentee, his/her heirs, or assigns, the land may be sold pursuant to the terms and conditions of the Indian Land Consolidation Act as now or hereafter amended, codified at 25 U.S.C. Sections 2201, et. seq. or the purpose of consolidating Tribal land holdings within the Tribal reservation area.

2. All sales of lands to be made pursuant to subparagraph (C) of subsection (1) of this Section shall be explicitly authorized by appropriate action of the Tribal Council of the Winnebago Tribe of Nebraska.
3. The net proceeds of the sale of assignment patents as herein provided shall accrue to the real estate bond payment and purchase fund and shall be used exclusively for the purchase of real property to be held in trust by the United States of America for the use and benefit of the Winnebago Tribe of Nebraska, or to be held by the Winnebago Tribe of Nebraska subject to a restriction upon alienation imposed by some law of the United States.
4. The net proceeds of the sale of lands made pursuant to the Indian Land Consolidation Act shall be held by the Secretary of the Interior in the special account mentioned in that Act and shall be used exclusively for the purchase of real property to be held in trust by the United States of America for the use and benefit of the Winnebago Tribe of Nebraska, or to be held by the Winnebago Tribe of Nebraska subject to a restriction upon alienation imposed by some law of the United States. [TCR 88-77]

11A-224 Name in which business conducted; execution of instruments.

1. All business of the financing service except as otherwise provided in this Article shall be conducted under the name of the "Winnebago Industrial Development Financing Service" which shall be designated on all documents produced by the financing service as a body corporate and politic of the Winnebago Tribe of Nebraska. Title to property pertaining to the operation of the financing service shall be obtained and conveyed in the name of the Winnebago Industrial Development Financing Service, except that title to real property to be used in the operation of the financing service, with the consent of the Secretary of the Interior, shall be taken in trust by the United States pursuant to 25 U.S.C Section 465, otherwise to be taken in the name of the Winnebago Tribe of Nebraska, and thereafter patented by the Tribe to the financing service.
2. Written instruments of the financing service shall be executed in the name of the financing service by the Tribal credit officer or his/her designate within the scope of his/her authority so to do, including specific authority to delegate such responsibility to lesser officials, as defined by the written rules, regulations and policies of the Winnebago Industrial Development Financing Service. [TCR 88-77]

11A-225 Civil actions against financing service. Civil actions may be brought against the Winnebago Industrial Development Financing Service on account of causes of action claimed to have arisen out of transactions connected with the operation of the Winnebago Industrial Development Financing Service upon condition that the provisions of this Section are complied with, and the Winnebago Industrial Development Financing Service shall otherwise be immune from any civil suit whether arising in law or in equity. The Winnebago Tribe of Nebraska shall not be, and the Tribal credit officer need not be named as parties in such actions. Service of process in such actions shall be made upon the president of the Winnebago Industrial Development Financing Service, and a true copy of all process including all pleadings and other papers filed therein shall be mailed by certified mail, return receipts requested, to the Chairman of the Winnebago Tribe of Nebraska whose address is P.O. Box 687, Winnebago, Nebraska 68071, and the Tribal attorney whose address may at all times be determined by contacting either the Winnebago administrative offices or the Winnebago Agency, Bureau of Indian Affairs, Winnebago, Nebraska 68071. Such actions may be brought in the same manner and shall be brought, however, exclusively in the courts of the Winnebago Tribe of Nebraska as now or hereafter constituted, with the right to appeal as in other civil actions. [TCR 88-77]

11A-226 Surety not required for financing service in civil actions. All provisions of law requiring that a surety or sureties be given on undertakings in actions on appeal, attachment, claim and delivery, executions and stays thereof, and other cases in which an undertaking or surety is required, shall not be applicable to the Winnebago Industrial Development Financing Service as the party seeking any such relief. The financing service may be required and shall give its own undertaking without surety and to reimburse the adverse party when required by law. [TCR 88-77]

11A-227 No execution of financing service property. All property of the financing service shall be exempt from levy and sale by virtue of any execution and no execution or other judicial process shall issue against the same nor shall any judgment against the financing service be a charge or lien upon its property; provided that nothing contained in this Section shall apply to or limit the rights of the holder of any bonds, notes, or deposits to pursue any remedy for the enforcement of any pledge or lien given by the financing service on its revenues or other moneys. Real property and personal property, other than unobligated cash on hand and future revenues, may be pledged or a lien allowed thereon only with the specific prior written consent of the Tribal Council upon the request of the Tribal credit officer. Such consent will not be granted except in the most extraordinary of circumstances in the sole discretion of the Tribal Council. [TCR 88-77]

11A-228 Audit of financing service accounts and records. The Tribal credit officer shall be responsible for contracting with a non-government certified public accounting firm to annually audit the Winnebago Industrial Development Financing Service in accordance with generally accepted auditing standards, which shall include inspection and verification of the assets in its possession and under its control with sufficient thoroughness to ascertain with reasonable certainty whether the valuations are carried correctly on its books. The auditor so hired shall audit the financing service's methods of operation and accounting, shall report the results to the Tribal credit officer as soon as practicable, and shall furnish one certified copy thereof to the treasurer for the use of the Winnebago Tribe of Nebraska and the official Tribal records. The costs of such audit shall be paid for by the Winnebago Industrial Development Financing Service. The Winnebago Tribal accounting department shall be responsible for an annual examination of the Winnebago Industrial Development Financing Service and for any investigation of the fiscal affairs of the financing service which may be necessary. The results of this examination, and any investigation, shall be reported to the Tribal credit officer and the Tribal Council. If such examination or investigation has indicated that criminal wrongdoing may have occurred, the report thereof shall also be delivered to the Tribal attorney general and the Tribal attorney. Fees for such examinations shall be charged by the accounting department for the examinations in the section provided at a daily rate to be established by the accounting department with the consent of the Tribal Council.

Such fees shall be charged for the time used by the Tribal accountant or other person corresponding in connection with such report or investigation and for the time used by each deputy examiner, or other person or persons in making and otherwise preparing and typing reports of examinations or investigations herein provided for. [TCR 88-77]

11A-229 Indian Financing Act authorization. The Winnebago Industrial Development Financing Service is hereby recognized by the Winnebago Tribe of Nebraska as "Organization(s)as defined in Section 3(f) of the Indian Financing Act of 1974, as amended, Act of April 12, 1974, P.L. 93-262, 88 SLAL. 77, 25 U.S.C. Section 1452(f), and Parts 80, 91, and 93 of Title 25 of the Code of Federal Regulations (1981) as amended, superseded, or redesignated, and is declared by the Winnebago Tribe of Nebraska to be an authorized agency of the Tribe for the purpose of the Act and regulations promulgated thereunder, and is hereby authorized by the Tribe to borrow money from the Indian Revolving Loan Fund, to relend or otherwise invest said borrowed funds pursuant to Section 102 of said Act, 25 U.S.C. Section 1462, to obtain insurance and interest subsidies on loans of Tribal funds and financing service or funds made pursuant to this Article, to obtain business grants, and to request and receive management and technical assistance all as provided by the Indian Financing Act. The Winnebago Industrial Development Financial Service is likewise designated an official agency of the Tribe, and is authorized to borrow and relend or invest money from any other loan or grant fund for economic development purposes administered by the federal government when the Winnebago Tribe would be eligible to borrow or receive such funds. [TCR 88-77]

UTILIZATION OF FINANCING SERVICE IN INDUSTRIAL DEVELOPMENT

11A-230 Declaration and finding of public purpose.
11A-231 Financing service advisory board.
11A-232 Authority of board; capital pool created.
11A-233 Minimum standards for loans from capital pool.
11A-234 Mortgage program administration.
11A-235 Purpose.
11A-236 Definitions.
11A-237 Powers.
11A-238 Default by mortgagors.
11A-239 Mortgage insurance fund.
11A-240 Insurance of mortgages.
11A-241 Mortgage insurance premiums.
11A-242 Expenses.
11A-243 Mortgages eligible for investment.
11A-244 Limitation; credit of financing service and Tribe not pledged.

11A-230 Declaration and finding of public purpose. The legislature of the Winnebago Tribe of Nebraska hereby declares and adopts a policy of enlisting the help of private enterprises to create more employment, production, and purchasing power for its citizens and all persons within the Tribal jurisdiction, and an enlarged tax base in order to promote the public health and welfare and Tribal government as expressed in this Article, and finds that it is and has been its purpose in authorizing and adopting the provisions of this Article, and particularly Sections 11-230 through 11-244, to sanction and authorize the expansion of the activities of the Winnebago Industrial Development Financing Service and to encourage active use of the purposes for which the Winnebago Industrial Development Financing Service is created. [TCR 88-77]

11A-231 Financing service advisory board. The chairman of the Winnebago Tribe of Nebraska with the advice and consent of the Tribal Council of the Winnebago Tribe of Nebraska may appoint an advisory board to the Winnebago Industrial Development Financing Service which shall be known as the "Industrial Development Financing Service Advisory Board." The Industrial Development Financing Service Advisory Board shall be composed of five persons knowledgeable in lending and finance and in motivating the expansion of industry within and without the jurisdiction of the Winnebago Tribe of Nebraska. The chairman shall appoint a chairman, vice-chairman, and secretary of such board and shall define their duties. Terms of such appointment shall be for a stated period from one to four years. The Winnebago Tribal Council shall fix compensation for the board on a daily or monthly basis. [TCR 88-77]

11A-232 Authority of board; capital pool created. The Industrial Development Financing Service Advisory Board of the Winnebago Industrial Development Financing Service shall formulate recommendations to the Tribal credit officer relative to the establishment of additional objectives for the operation of the Winnebago Industrial Development Financing Service, including the sponsoring, coordination, and assistance to the activities of public officials and private individuals and persons in creating along-term first mortgage industrial development capital pool or revolving fund of one hundred million dollars or more; and such advisory board shall act in behalf of the Winnebago Industrial Development Financing Service in such other capacity as may be approved by the Winnebago Tribal Council. [TCR 88-77]

11A-233 Minimum standards for loans from capital pool. The Winnebago Industrial Development Financing Service is hereby authorized to sponsor, in cooperation where possible with private or public lenders, a reservation wide program for the expansion or creation of additional enterprises engaged in or to be engaged in the assembling, fabricating, manufacturing, mixing, or processing of any agricultural, mineral, or manufactured product or any combination thereof through the granting of first mortgage loans to companies or sponsoring parent corporations or other legal associations who have been in business for

at least five years and who can furnish certified balance sheets and profit and loss statements showing an operating profit for at least three consecutive years prior to the date of the loan application. With the prior written consent of the Winnebago Tribal Council, loans for such purposes may be made outside the reservation boundaries. [TCR 88-77]

11A-234 Mortgage program administration. The Winnebago Industrial Development Financing Service shall administer an industrial building and agricultural development mortgage program as provided in Sections 11-230 through 11-244. [TCR 88-77]

11A-235 Purpose. It is declared that a reservation-wide need exists for agricultural development; and for industrial and office buildings and expansion of existing industrial and office buildings and complexes, including service or recreation oriented industries. It is also declared that it is in the interest of the public welfare and purpose to promote the expansion and diversification of agriculture and industry, to increase employment, and to provide a larger tax base for the economy of the Winnebago Tribe of Nebraska. Therefore, the industrial building and agricultural development mortgage program is created to encourage the making of mortgage loans for the purpose of furthering industrial expansion and agricultural development within the Winnebago reservation and the surrounding communities, and thus improve the welfare of the public for the foregoing reasons and, by the stimulation of a larger flow of private investment funds from banks, building and loan associations, credit unions, savings and loan associations, insurance companies, and other financial institutions, including pension, retirement, and profit sharing funds, meet the needs of agricultural development and industrial plant creation and expansion. [TCR 88-77]

11A-236 Definitions. As used in Sections 11-230 through 11-244 of this Article, the following words and terms shall have the following meanings unless the context shall indicate another meaning or intent:

1. "Financing service" shall mean the Winnebago Industrial Development Financing Service.
2. "Cost of project" shall mean the cost or fair market value of construction, excavation, lands, equipment, property rights, easements, financing charges, interest, engineering and legal services, plans, specifications, surveys, cost estimates, studies, and other expenses as may be necessary or incident to the development, construction, equipping, financing, and placing in operation of an industrial or agricultural development project.
3. "Federal agency" shall mean and include the United States of America, the President of the United States of America, any department of, or corporation, agency, or instrumentality heretofore or hereafter created, designated, or established by the United States of America.
4. "Industrial project" shall mean any building, whether or not the financing service has already insured mortgage payments under a mortgage on any such building in accordance with Sections 11-230 through 11-244 of this Article, or other real estate improvement within the reservation of the Winnebago Tribe of Nebraska or without said reservation upon approval of the project by the Tribal Council, and, if a part thereof, the land upon which such building or other real estate improvement may be located, provided that such building or other real estate improvement is to be used:
    A. By any industry for the manufacturing, processing, or assembling of raw materials or manufactured products; or
    B. By any industry for the provision of services to the public or other industry, or for the wholesale or retail sale of personal property; or
    C. For the providing of research or warehousing facilities for the benefit of any such industry; and provided further, that the financing service has determined that such building or other real estate improvement will tend to provide gainful employment for the people of the Winnebago reservation and surrounding communities, increase the tax base

of the Winnebago Tribe of Nebraska, and diversify and expand industry so that periods of large scale unemployment and distressed times may be avoided.

5. "Agricultural development project" shall man any irrigation construction or irrigation equipment purchase, agricultural building construction, purchase of agricultural equipment, or other improvement to agricultural real estate, whether or not the financing service has already insured mortgage payments under a mortgage on any land, building, or equipment referred to above, provided that the construction, purchases, or improvements referred to above are for the purpose of growing, raising, processing, or furthering the growth, raising, or processing of livestock, poultry, or agricultural crops.
6. "Maturity date" shall mean the date on which the mortgage indebtedness would be extinguished if paid in accordance with periodic payment provided for in the mortgage.
7. "Mortgage" shall mean a first mortgage or security agreement on an industrial or agricultural development project, or part thereof, together with the credit instruments thereby secured and creating and constituting a first hen of record; provided however, a "first mortgage" shall include a second or subsequent mortgage of security agreement on an industrial or agricultural development project if:
   A. The financing service is already the holder of a first mortgage or security agreement on the industrial or agricultural development project and there is no intervening mortgage or security interest held by any person or entity other than the financing service, except a holder as described in subparagraph 2 of this subsection.
   B. The holder of such second or subsequent mortgage or security agreement is also the holder of a prior mortgage or security agreement on the industrial or agricultural development project under which prior mortgage or security agreement the financing service is already insuring mortgage payments.
   C. No other person or legal entity holds an intervening mortgage, security interest, or lien on such industrial or agricultural development project prior to such second or subsequent mortgage or security interest.
8. "Mortgagee" shall mean the original lender approved by the financing service under a mortgage, and its successors and assigns, and may include all insurance companies, trust companies, banks, building and loan associations, credit unions, savings and loan associations, investment companies, savings banks, individuals, executors, administrators, guardians, conservators, trustees, and other fiduciaries, including pension, retirement, and profit sharing funds.
9. "Mortgagor" shall mean an individual corporation, or other legal entity which obtains a loan under the provisions of Sections 11-230 through 11-244 of this Article and which pledges property as security for such loan as provided in Sections 11-230 through 11-244 of this Article..
10. "Mortgage payments" shall mean periodic payments by the mortgagor to the mortgagee required by the mortgage or loan agreement secured by the mortgage, and may include interest, installments of principal, taxes and assessments, land lease rentals, mortgage insurance premiums, and hazard insurance premiums, or any of them in any combination as the financing service may prescribe. [TCR 88-77]

11A-237 Powers. In carrying out the provisions of Sections 11-230 through 11-244 of this Article, the Financing Service is authorized and empowered:

1. To insure the payment of mortgage loans secured by industrial buildings, or agricultural buildings, lands, equipment, or improvements consistent with the terms and limitations expressed in Sections 11-230 through 11-244 of this Article.
2. To accept from a federal agency, loans or grants for use in carrying out its purposes, and to enter into agreements with such agency respecting any such loans or grants.
3. In its discretion in connection with the insuring of payments of any industrial project mortgage, to request for its guidance a finding of the planning board of the municipality, or if there is no

planning board, a finding of the municipal officers of the municipality in which the industrial project is proposed to be located, or of the regional planning board of which such municipality is a member, as to the expediency and advisability of such project.

4. To enter into agreements with prospective mortgagees and mortgagors for the purpose of planning, designing, constructing, acquiring, altering, and financing industrial and agricultural development projects.
5. To acquire, purchase, manage and operate, and hold and dispose of, real and personal property, to take assignments of rentals and leases, and make and enter into all contracts, leases, agreements, mortgages, security agreements, and other arrangements necessary or incidental to the performance of its duties.
6. When in the opinion of the financing service it is necessary or advisable, in order to further the purposes of Sections 11-230 through 11-244 of this Article, or to safeguard the mortgage insurance fund or other financing service assets, to purchase, acquire, take assignments of notes, mortgages, and other forms of security and evidences of indebtedness, to purchase, acquire, attach, seize, accept or take title to, any industrial or agricultural development project, or mortgaged part thereof, by conveyance or, when an insured mortgage or mortgage held by the financing service on such property is clearly in default, by foreclosure in a court of competent jurisdiction, and to sell, lease, or rent an industrial project as otherwise provided in this Article. [TCR 88-77]

11A-238 Default by mortgagors. When a mortgagor does not meet mortgage payments insured or held by the financing service by reason of its industrial or agricultural development project, the financing service, for the purpose of maintaining income from industrial or agricultural development projects on which mortgage loans have been insured or made by the financing service, and for the purpose of safeguarding the mortgage insurance fund or other financing service assets, may grant the mortgagor permission to lease or rent the property to a tenant for cause other than that specified in Sections 11-230 through 11-244 of this Article as an eligible use for such projects, such lease or rental to be temporary in nature and subject to such conditions as the financing service may prescribe. [TCR 88-77]

11A-239 Mortgage insurance fund. There is hereby created an industrial building and agricultural development mortgage insurance fund, hereinafter referred to as the "fund" which shall be used by the financing service as a non-lapsing, revolving fund for carrying out all the provisions of Sections 11-230 through 11-244 of this Article. To this fund shall be charged any and all expenses of the financing service for this purpose, including mortgage payments required by loan defaults, and to the fund shall be credited all mortgage insurance premiums and proceeds from the sale, disposal, lease or rental or real or personal property which the financing service may hold as a result of insuring the mortgage upon such property, and any amounts of the financing service surplus which the Winnebago Tribal Council directs to be credited to such account to maintain the account in sound fiscal condition. [TCR 88-77]

11A-240 Insurance of mortgages. The financing service, as the administrator of the fund created in Sections 11-230 through 11-244 of this Article, is authorized, upon application of the proposed mortgagee, to insure mortgage payments required by a mortgage on any industrial or agricultural development project, or mortgaged part thereof, upon such terms and conditions as the financing service may prescribe, and subject to the limitations of Sections 11-230 through 11-244 of this Article, provided the aggregate amount of all mortgages so insured outstanding at any one time shall not exceed five million dollars, provided that sums reinsured with other mortgage insurance companies shall not be counted in calculating the five million dollar limit. To be eligible for insurance under the provisions of Sections 11-230 through 11-244 of this Article, a mortgage shall:

1. Be one which is made to and held by a mortgagee approved by the financing service.

2. Involve a principal obligation, including initial service charges and appraisal, inspection, and other fees approved by the financing service, not to exceed ninety percent of the cost of any project.
3. Have a maturity date satisfactory to the financing service, but in no case later than thirty years from the date of the mortgage for any project.
4. Contain complete amortization provisions satisfactory to the financing service requiring periodic payments, costs of Tribal or other locally applicable property taxes and assessments, land lease rentals, if any, and hazard insurance on the property and such mortgage insurance premiums as are required under the next succeeding section, all as the financing service shall from time to time prescribe or approve.
5. Be in such form and contain such terms and provisions, with respect to property, insurance, repairs, alterations, payment of taxes and assessments, restrictions as to location of machinery and equipment, default reserves, delinquency charges, default remedies, anticipation of maturity, additional and secondary hens, and other matters as the financing service may prescribe. [TCR 88-77]

11A-241 Mortgage insurance premiums. The financing service is authorized to fix mortgage insurance premiums for the insurance of mortgage payments under the provisions of Sections 11-230 through 11-244 of this Article, such premiums to be computed as a percentage, which shall not exceed five percent per annum, of the principal obligation of the mortgage in such manner in each case as the financing service shall determine on the basis of all pertinent available data. Such premiums shall be payable by the mortgagors or the mortgagees in such manner as shall be prescribed by the financing service. The amount of premium need not be uniform among the various loans insured. [TCR 88-77]

11A-242 Expenses. The financing service, subject to the approval of the Winnebago Tribal Council may expend out of the fund such moneys as may be necessary for any expenses of the financing service in carrying out the provisions of Sections 11-230 through 11-244 of this Article, including administrative, legal, actuarial, and other services. [TCR 88-77]

11A-243 Mortgages eligible for investment. Mortgages insured by the financing service under Sections 11-230 through 11-244 of this Article and participations therein are hereby made legal investments for all insurance companies, trust companies, banks, investment companies, savings banks, building and loan associations, credit unions, savings and loan associations, executors, administrators, guardians, conservators, trustees and other fiduciaries, pensions, profit sharing, and retirement funds. [TCR 88-77]

11A-244 Limitation; credit of financing service and Tribe not pledged. Nothing in Sections 11-230 through 11-244 of this Article shall be construed to authorize or permit the financing service or any officer thereof to create any indebtedness of the finance service or of the Winnebago Tribe of Nebraska, or to incur any obligation of any kind or nature, except such as shall be payable solely and exclusively from the fund created in Sections 11-230 through 11-244 of this Article and the revenues appropriated and accumulated therein. Nothing herein shall be construed to require the appropriation of any funds of the Winnebago Tribe of Nebraska for the fund. [TCR 88-77]

TITLE 11A
ARTICLE 3
WINNEBAGO ECONOMIC DEVELOPMENT ACT OF 1989
(As redesignated March 9, 1994]

GENERAL PROVISIONS

11A-301 Citation.
11A-302 Declaration of need and legislative findings.
11A-303 Purposes.
11A-304 Definitions.

11A-301 Citation. This Article may be cited as the Winnebago Economic Development Act. [TCR 89-36]

11A-302 Declaration of need and legislative findings. It is hereby declared and found:

1. That the health, safety and welfare of the people of the Winnebago Tribe of Nebraska are enhanced by continual encouragement, development growth and expansion of private enterprise within the Indian Country under the jurisdiction of the Winnebago Tribe of Nebraska. That the Indian Country under the jurisdiction of the Winnebago Tribe of Nebraska is an economically depressed area that needs particular attention to create new jobs, stimulate economic activity and attract private sector investment to improve the quality of life for those within the Winnebago reservation. It is, therefore, the purpose of this Act to stimulate employment, business and industrial growth and to encourage new economic activity in the Indian Country under the jurisdiction of the Winnebago Tribe by means of developing the legal and physical infrastructure necessary for business and industry, the removal of unnecessary governmental barriers to the creation of economic growth, providing assistance to business and industries, providing tax incentives and utilizing to the farthest extent Tribal sovereignty and the Indian Tribal Government Tax Status Act of 1982.
2. That the jurisdictional area of the Winnebago Tribe of Nebraska is an area of chronic and substantial economic underdevelopment, and there exists a critical need for the development of economic and industrial activities within the jurisdiction of the Winnebago Tribe of Nebraska in order to address the disproportionate and persistent unemployment rate which detrimentally affects the Tribal membership and other persons within the Tribe's jurisdiction.
3. That active and planned Tribal participation by the Winnebago Tribe of Nebraska in both its business and governmental capacity in economic endeavors can have a significant and positive impact on the long-term economic stimulation of the local economy for both the Tribe and the local economy.
4. That economic strategy maintaining a sound balance between the development of the Tribe's economic and industrial opportunities-Tribal business-within the jurisdiction of the Winnebago Tribe of Nebraska, and the acquisition of land for these purposes, is essential to the prosperity, peace and welfare of those within the Winnebago reservation.
5. That a critical need exists for the Winnebago Tribe of Nebraska to focus its considerable energies and strengths on the development of diversified and stable economic endeavors within the jurisdiction of the Winnebago Tribe of Nebraska that includes and emphasizes both the development of the Tribe as business initiator, planner, manager of Tribal enterprises and upon the Tribe as government creating the legal infrastructure necessary to support, enhance, and encourage the creation of a heretofore non-existent private business sector within the jurisdiction of the Winnebago Tribe of Nebraska.

6. That it is vital for the Winnebago Tribe of Nebraska to establish a focal point for economic development activities within the Tribal structure by Tribal legislation to which the Tribal Council can delegate specific duties and with which it can work in creating Tribal enterprises and developing the legal infrastructure necessary to support the development of a private business sector within the jurisdiction of the Winnebago Tribe of Nebraska.
7. That in order to address these identified needs and to establish a focal point through which solutions can be analyzed, proposed and initiated, the Tribal Council has found it necessary in the public interest that it create and authorize the operation the Winnebago Economic Development Authority through Tribal Council Resolution #89-36.
8. That the creation and operation of the authority serves an essential governmental function of the Winnebago Tribe of Nebraska by allowing the Tribe to address the serious economic, social, and health problems associated with the serious unemployment and underemployment within the jurisdiction of the Winnebago Tribe of Nebraska, the general lack of available Tribal funds available to address these problems, the general lack of a sufficient land base for the economic development needs of the Tribe, and the attendant impact upon the public health, safety, and welfare.
9. That the creation and operation of the authority addresses a situation which has not, and cannot, be wholly relieved through the operation of private sector enterprises alone, and that providing job training and relief from critical unemployment and underemployment rates, the development of Tribal revenue generating public and private sectors, the acquisition of land by the Winnebago Tribe of Nebraska for development purposes and developing Tribal sources of financing economic development and land acquisition are public uses and purposes that are essential governmental functions of the Winnebago Tribe of Nebraska, for which public monies can be spent and private property acquired, and are governmental functions of Tribal concern.
10. That the necessity in the public interest for the provisions hereinafter enacted is hereby declared as a matter of legislative determination. [TCR 89-36]

11A-303 Purposes. The economic development authority shall be organized and operated for the purposes of:

1. Remedying the disproportionate unemployment rate of Tribal members and other persons residing within the Winnebago reservation.
2. Remedying the disproportionate underemployment rate of Tribal members and other persons within the Winnebago reservation.
3. Providing revenues with which the Tribe may address other pressing matters of public health, safety, and welfare, or for other Tribal purposes.
4. Attracting private industry to the Winnebago reservation.
5. Expanding the Tribal land base and economic development potential through the purchase of additional land for Tribal use.
6. Identifying planning, initiating, and developing Tribal economic and industrial activities on behalf of the Winnebago Tribe of Nebraska.
7. Acting a catalyst within the Tribal structure, working in conjunction with the Tribal legislative body-the Tribal Council and Tribal Council-to provide for the orderly creation and temporary management of Tribal business enterprises.
8. Making recommendations to the Tribal Council as to legislation for development of Tribal business enterprises.
9. Making recommendations to the Tribal Council useful and necessary for the development of private sector business enterprises within the jurisdiction of the Tribe such as, but not limited to, recommendations regarding taxation, business licensing finance, land acquisition, use and zoning requirements, environmental protection, and authorized forms for business structures such as corporations, joint ventures, partnerships.

10. Establishing in conjunction with the Tribal Council an economic development revolving fund.
11. Encouraging the creation of a Tribal tax base, the earning of income which can be used to support essential functions of the Tribal government, the provision of credit through which economic activity can be encouraged.
12. Specified Purposes: In addition to the general purposes expressed in subsections (1) through (6) of this Section, the Winnebago Economic Development Authority is intended to be an agency of the Winnebago Tribe of Nebraska and, through its activities, further the general purposes expressed as well as the following specific Tribal and federal purposes:
    A. The purpose of encouraging and promoting agriculture, commerce, and industry, for creating a fund to be known as the real estate bond payment and purchase fund to be used for the acquisition of real property for economic development and other purposes, including the purposes of providing land to landless members of the Winnebago Tribe of Nebraska and other eligible persons, for the provision of income and the creation of a sound economic and industrial tax base for the support of the government of the Winnebago Tribe of Nebraska as guaranteed to the Winnebago Tribe of Nebraska in the various treaties between the United States and the Winnebago Tribe of Nebraska and the rights of self-government and social advancement recognized and provided for the laws of the United States.
    B. The purpose of providing land and borrowing money and issuing loans for the acquisition of land for the Winnebago Tribe of Nebraska, other Indian Tribes and individual Indians or groups of Indians pursuant to Section 5 of the Act of June 18, 1934, 48 Stat. 985 (25 U.S.C. Section 465), to Section 1 and 2 of the Act of June 26, 1936, 49 Stat. 1967 (25 U.S.C. Sections 501, 502), the insurance of loans for such acquisitions pursuant to the Act of April 11, 1970 (25 U.S.C. Section 488 et seq.) and other federal laws providing for the acquisition of land for Indian individuals and Indian Tribes, and the providing of federal insurance for loans made to Indian Tribes, individuals, or others;
    C. The purpose of furthering Indian industry and labor and economic development within the Indian Country as provided for in the Act of June 25, 1910, 36 Stat. 861 (25 U.S.C. Section 47), Section 1 of the Act of May 9, 1938, 52 Stat. 302 (25 U.S.C. Section 306) and other federal laws supporting the economic development of Indian Country.
    D. The purpose of furthering the investment of Indian Tribal and individual funds as provided in the Act of June 24, 1938, 25 Stat. 1037 (25 U.S.C. Section 162a);
    E. The purpose of furthering any necessary irrigation projects within the Winnebago Tribe of Nebraska jurisdiction needed to make agricultural land productive to complement the provisions of Chapter 11 of Title 25 of the United States Code;
    F. The purpose of providing income and taxable economic and industrial base in order for the Winnebago Tribe of Nebraska to operate a judicial and law and order system sufficient to meet the requirements of Title 11 of the Act of April 11, 1968, 82 Stat. 77 (25 U. S.C. Sections 1301 et seq.);
    G. The purpose of providing income and taxable economic and industrial base in order for the Winnebago Tribe of Nebraska to further the purpose of Congress expressed in Section 1 of the Act of April 12, 1974, 88 Stat. 77 (25 U.S.C. Section 1451), and balance of said Act. (Indian Financing Act);
    H. The purpose of providing income and taxable economic and industrial base in order for the Winnebago Tribe of Nebraska to further the purpose of Congress expressed in Section 3 of the Act of September 30, 1976, 90 Stat. 1401 (25 U.S.C. Section 1602), and balance of said Act. (Health Care);
    I. The purpose of providing income and taxable economic and industrial base in order for the Winnebago Tribe of Nebraska to further the purpose of Congress expressed in Section 101 of the Act of October 17, 1978, 921 Stat. 1325 (25 U.S.C. Section 1802), and balance of said Act. (Higher Education);

J. The purpose of providing income and taxable economic and industrial base in order for the Winnebago Tribe of Nebraska to further the purpose of Congress expressed in Section 3 of the Act of December 22, 1982, 96 Stat. 1938, 96 Stat. 2517 (25 U.S.C. Sections 2201 et seq.);

K. The purpose of providing funds for the further Tribal development of Indian owned mineral resources pursuant to the Act of December 22, 1982, 96 Stat. 1938 (25 U.S.C. Sections 2101 et seq.);

L. The purpose of providing funds for Indian Land Consolidation pursuant to the Act of January 12, 1983, 96 Stat. 2517 (25 U.S.C. Sections 2201 et seq.);

M. The purpose of providing income and taxable economic and industrial base in order for the Winnebago Tribe of Nebraska to further the policy of Congress expressed in the Act of January 4, 1975, 88 Stat. 2206 (25 U.S.C. && 450 et seq.) and particularly in Section 102 of Title I of that Act (25 U.S.C. Section 4050 (Indian Self-Determination) and the Act of November 2, 1921, 42 Stat. 208 (25 U.S.C. Section 13) (Snyder Act); and the exercise of each and every essential governmental function reasonably necessary or proper to further such purposes and policies. [TCR 89-36]

11A-304 Definitions. The following terms whenever used or referred to in this Article, shall have the following respective meanings, unless a different meaning clearly appears from the context:

1. "Tribal Council" means the Winnebago Tribal Council.
2. "Claim" means a claim for personal injury, death, property damage, or for recovery of property arising in tort law.
3. "Contract" means any agreement expressed or implied by law for the exchange of consideration.
4. "Immediate family" means mother, father, sister, brother or child.
5. "Misconduct in office" means any one or more of the following acts:
   - A. Conviction in any court of competent jurisdiction of a felony or other crime involving dishonesty or moral turpitude, notwithstanding any right to appeal.
   - B. Offering or conferring upon another or soliciting or accepting from another any financial benefit or thing of value for the recipient's decision, opinion, recommendation vote or other exercise of discretion or as compensation for such past action.
   - C. Threatening unlawful harm to any person with the purpose of influencing another's decision, opinion, recommendation, vote or other exercise of discretion or in retaliation for such past action.
   - D. Knowingly, with the intent to benefit him/herself or harm another, committing an unauthorized act under color of official action or refraining from the performance of any duty imposed by law or by the nature of board of trustee membership.
   - E. Use of privileged information gained as a result of board of trustee membership for the benefit of him/herself or the harm of another.
   - F. Knowingly withholding information which could be necessary to the board of trustees for informed decision making.
   - G. Making any false statement or knowingly providing false information to the board of trustees, including but not limited to the information provided in his/her resume and certificate of eligibility.
   - H. Misuse of authority property by unlawfully appropriating authority assets, funds or property for his/her own use or the use of another.
6. "Moral turpitude" shall mean an act of baseness, vileness, or depravity in the private and social duties which a man owes to his/her fellow men, or to society in general, contrary to the accepted customs of the Tribe regarding justice, honesty, modesty, or good moral character.

7. "Neglect of duty" means absence without reasonable cause from four consecutive meetings of the board of trustees or continued failure, over a period of four (4) months, to fulfill any regular or special duties or responsibilities as a member of the board of trustees.
8. "Nepotism rule" means that the nomination or appointment of a member of the immediate family of the nomination or appointor is prohibited.
9. "Obligations" means any notes, bonds, interim certificates, debentures, or other forms of obligation issued by the authority pursuant to this Article.
10. "Obligee" includes any holder of an obligation, an agent or trustee for any holder of an obligation, or lessor demising to the authority property used in connection with a project, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government, when it is a party to any contract with the authority in respect to a project.
11. "Resume" means a comprehensive summary of an individual's formal education, professional training, prior work experience, activities, affiliations and honors, which are indicative of the person's capabilities and qualifications.
12. "Serious insufficiency" means continued failure, over a period of months, after a minimum of two documented notices, to adequately perform any regular or special duties or responsibilities as a member of the board of trustees provided that the notice(s) given specify the standards of performance necessary and expected and the improvements required to achieve such standards.
13. "Tribal Court" means the Winnebago Tribal Court.
14 "Winnebago reservation" means all the land within the original boundary lines of the Winnebago Tribal reservation and any and all future additions of land acquired within or without said boundary line by the Secretary of the Interior or by the Tribe, except as otherwise provided by law. [TCR 89-36]

BOARD OF TRUSTEES

11A-305	Economic development authority created.	11A-310	Officers.
11A-306	Board created; number.	11A-311	Removal of board members.
11A-307	Appointment of board members.	11A-312	Compensation to be paid.
11A-308	Qualifications of board members.	11A-313	Quorum.
11A-309	Term of office.	11A-314	Duties of officers.
		11A-315	Meetings.

11A-305 Economic development authority created.

1. Pursuant to the authority vested in the Tribal Council of the Winnebago Tribe of Nebraska by Article IV, section l(e) of the Constitution, and through its authority and duty to provide for the health, safety, morals, and welfare of all persons within the jurisdiction of the Tribe, Tribal Council Resolution #89-36 established and created a public body corporate and politic known as the Winnebago Economic Development Authority (authority) which shall be an agency of the Winnebago Tribe of Nebraska having the purposes, powers, and duties as herein or hereafter provided by Tribal law.
2. In any suit, action, or proceeding involving the validity or enforcement of, or relating to any of its contracts, the authority shall be conclusively deemed to have become established and authorized to transact business and exercise its powers upon proof of the adoption of this Article. A copy of this Article, duly certified by the secretary of the Tribe, shall be admissible in evidence in any suit, action, or proceeding. The Tribal courts shall take judicial notice of this Article. [TCR 89-36]

11A-306 Board created; number. The affairs of the authority shall be managed by the board of trustees composed of seven persons. [TCR 89-36]

11A-307 Appointment of board members. The board members shall be appointed, and may be reappointed by the Tribal chairman with the advice and consent of the Tribal Council expressed by resolution. Advice and consent is defined to mean confirmation. The Tribal Council is vested with the sole authority to confirm or reject any nomination for appointment to the board of trustees. The Tribal chairman has the sole authority for nominating persons for such appointments. When one or more vacancies occur on the board of trustees, the Tribal chairman shall submit his/her nominations for appointment to the board to the Tribal Council within fifteen days of such vacancy or vacancies. The Tribal Council shall have fifteen days to consider the nominations and either confirm or reject the appointments. Upon rejection of any nominations, the Tribal chairman shall submit his/her alternate nominations to the Tribal Council within fifteen days of notification of the rejection. The Tribal Council shall have fifteen days to consider the alternate nominations and either confirm or reject the appointment(s). Failure of the Tribal chairman to comply with the time frames herein delineated shall result in his/her forfeiture of nomination authority. In such instances, the nominating authority shall pass to the vice chairman. A resolution of the Tribal Council signed by the Tribal chairman, attested by the Tribal secretary as to the appointment or reappointment of any board members shall be conclusive evidence of the due and proper appointment of the board member. [TCR 89-36]

11A-308 Qualifications of board members.

1. A board member may be a member or non-member of the Tribe, and not more than two board members at any one time may be members of the Tribal Council provided that the majority of the board shall be comprised of members of the Winnebago Tribe of Nebraska.
2. No person shall be barred from serving on the board because he/she is an employee of an enterprise of the authority or the Tribe, or has a business contractual relationship with the authority or the Tribe, or operates a private business within the Winnebago reservation. However, no such board member shall be entitled or permitted to participate in or be present at any portion of a meeting (except in his/her capacity as a member of the public or as an employee), or to be counted or treated as a member of the board, concerning any matter involving his/her individual rights, obligations or status.
3. Each board member shall be least twenty-one years of age and legally capable of entering into a binding contract.
4. No person who has been finally convicted in any court of competent jurisdiction of a felony or other crime involving embezzlement, fraud, or moral turpitude shall serve on the board of trustees.
5. Each board member shall take an oath to support and defend the Constitution and laws of the Winnebago Tribe of Nebraska and shall sign a certificate of eligibility on which the board member shall attest: "I hereby certify that I have read the qualifications for members of the board of trustees of the Winnebago Economic Development Authority and that I meet the qualifications prescribed by law."
6. Each nominee shall be required to submit a Resume (as defined in Section 103(h) of this Article) for review by the Tribal Council at the time the individual is nominated by the Tribal chairman for appointment to the board.
7. All nominations and appointments to the board of trustees shall comply with the nepotism rule as set forth in Section 11-304(8) of this Article. [TCR 89-36]

11A-309 Term of office. The term of office shall be two years and staggered, and the first appointment of board members shall be for terms of one, two, and two, one years for the respective members. Thereafter, all appointments shall be for five years beginning from the date following the regular expiration of the particular seat on the board, except that in the case of a vacancy occurring prior to the expiration of a regular term, an appointment to that seat shall be only for the length of the unexpired term. Each member of the board shall hold office until his/her successor has been appointed. [TCR 89-36]

11A-310 Officers.

1. The board of trustees shall elect from among its members a president, and vice-president, and from within its members a secretary and a treasurer.
2. The officers shall serve as officers at the pleasure of the board of trustees. Removal of a trustee from an office shall not be deemed to be a removal from the board of trustees. However, removal of an officer from the board of trustees pursuant to Section 11-311 of this Article shall constitute a removal from his/her office whether or not specifically so stated in the removal proceedings. [TCR 89-36]

11A-311 Removal of board members. A member of the board may be removed by the Tribal Council for serious inefficiency or neglect of duty or for misconduct in office as defined in Section 11304(5), (7) and (12) of this Article, but only after a hearing before the Tribal Council, and only after the member has been given a written notice of the specific charges against him/her at least fifteen days prior to the hearing. At any such hearing, the member shall have the opportunity to be heard in person or by

counsel and to present witnesses in his/her behalf. In the event of removal of any board member, a record of the proceedings, together with the charges and finding thereon, shall be filed with office of the Tribal secretary and a certified copy thereon filed with the clerk of the Tribal Court. The Tribal Court shall furnish a record to the Tribal Council for such purpose upon request. Notwithstanding the defense of sovereign immunity, any person removed from his/her position as a member of the board of trustees may appeal such removal by filing, in the Tribal Court only, a civil action for injunctive and declaratory relief naming the Tribal Council as defendant. The Tribal Court shall review the record of the removal proceedings, and if prejudicial error was committed, or if no just cause is shown therein for the removal, the Tribal Court may vacate the removal and declare that such person is still a member of the board and the Tribal Council shall be bound by such decision. The parties shall have the right to appeal such court findings as in other cases, and the Tribal Court shall not vacate the order of the Tribal Council if it determines that any error found in the proceedings was harmless. [TCR 89-36]

11A-312 Compensation to be paid. The board of trustees may receive compensation for their services at a rate to be established by the Tribal Council, and reimbursement for expenses, including traveling expenses, when incurred in the discharge of their duties. Expenses may be advanced with approval of the board of trustees. No member of the board of trustees shall have his/her compensation reduced during his/her term of office, except that if funds be unavailable for appropriation, the compensation of all board members may be reduced proportionally to the availability of funds. [TCR 89-36]

11A-313 Quorum. Four members of the board shall constitute a quorum. [TCR 89-36]

11A-314 Duties of officers.

1. The president of the board of trustees shall preside at all meetings of the board, and shall generally be responsible for the efficient and orderly functioning of the authority.
2. The vice-president of the board of trustees shall assume the duties of the Tribal chairman in his/her absence, or upon his/her neglect, failure, or refusal to undertake the duties required or delegated to him/her by law.
3. The secretary of the board shall keep complete and accurate records of all meetings and actions taken by the board. One copy of the record of the meetings and actions taken by the board shall be filed in the Tribal secretary's office.
4. The treasurer shall keep fall and accurate financial records, make periodic reports to the board, and submit complete quarterly and annual reports, in written form, to the Tribal Council as required by Section 11-329 of this Article. [TCR 89-36]

11A-315 Meetings. Regular meetings of the board shall be held at least once each calendar quarter on such day as may be established by rule of the board. Special or emergency meetings may be held upon twenty-four hours actual notice, or upon such notice as the board may by rule determine, and business transacted, provided that not less than a majority of the full board concurred in the proposed action. [TCR 89-36]

POWERS OF THE AUTHORITY

11A-316 Period of existence.
11A-317 Power to sue and be sued.
11A-318 General powers.
11A-319 Securing financial assistance.
11A-320 Certain property laws do not apply.

11A-316 Period of existence. The authority shall have perpetual existence and succession in its own name. [TCR 89-36]

11A-317 Power to sue and be sued.

1. The authority shall have the power to sue in any court in its own name, and with the consent of the Tribal Council expressed by resolution, to sue on behalf of the Winnebago Tribe by styling the case as "The Winnebago Tribe of Nebraska ex rel. Winnebago Economic Development Authority."
2. The authority may be sued, in the Tribal Court only, in its own name upon any contract or obligation arising out of its activities within the Winnebago reservation under this Act and the immunity from suit which it has as an agency of the Winnebago Tribe of Nebraska due to the doctrine of sovereign immunity is hereby expressly waived for such purposes to the extent herein stated.
3. The authority may be sued in the Tribal Court or in the court of another jurisdiction in its own name upon any contract or obligation arising out of its activities in such other jurisdiction, and the immunity from suit which it has as an agency of the Winnebago Tribe of Nebraska due to the doctrine of sovereign immunity is hereby expressly waived for such purposes to the extent herein stated.
4. No property of the authority located within the Winnebago reservation may be taken by attachment, court order, lien or otherwise to satisfy any judgment rendered in such a case absent the consent of the Tribal Council first obtained.
5. Neither the Tribe nor any of its property shall be liable for any of the debts, liabilities, or obligations of the authority, nor may any court make or enforce any order concerning execution upon or the right to possession of any Tribally owned property assigned to the use of the authority unless the Tribal Council gives its consent to such order. [TCR 89-36]

11A-318 General powers. The authority shall have the following powers which it may exercise consistent with the purpose for which it is established:

1. To adopt and use a corporate seal.
2. To enter into agreements, contracts, and undertakings with any governmental agency, federal, state, or local (including any Tribe) or with any person, partnership, corporation, and to agree to any conditions attached to federal financial assistance.
3. To lease property from or to the Tribe and others for such periods as are authorized by law, and to hold and manage or sublease the same.
4. To borrow or lend money, to issue temporary or long term evidence of indebtedness, and to repay the same. Obligations shall be issued and repaid in accordance with the provisions of Chapter Four of this Article.
5. To pledge the assets and receipts of the authority as security for debts; and to acquire, sell, lease exchange, transfer or assign personal property or interests therein.
6. To purchase or take by gift any land or interest in land within or without the Winnebago reservation provided that such land located within the Winnebago reservation shall, upon

payment of the purchase price and satisfaction of any purchase money or pre-purchase mortgage on the land, be placed in trust upon the approval of the Secretary of the Interior for the benefit of the Winnebago Tribe of Nebraska and will then be assigned to the use of the authority to the extent provided by law, provided that the authority may not lease Tribal land assigned to its use for a period exceeding the term of the assignment of the land to the authority or for a period more than authorized by federal law. For the purposes of this subparagraph, as assignment of Tribal land to the authority for an indefinite term, or for not stated term shall be as assignment which is revocable upon thirty days notice by the Tribal Council that the land is needed for other Tribal purposes. The determination of the Tribal Council of such need shall be final and conclusive.

7. To undertake and carry out studies and analysis of employment and job training needs within the Winnebago reservation, to operate economic development projects and Tribal businesses, to aid and assist private sector businesses in locating within the Winnebago reservation including assistance with achieving compliance with appropriate Tribal laws and regulations.
8. To make rules and regulations regarding its activities pursuant to this act as the board may deem necessary and desirable to effectuate the powers granted by this Article provided, that all such rules and regulations shall be filed for record in the Tribal secretary's office and the Tribal Court clerk's office prior to being given any force or effect.
9. To purchase insurance from any stock or mutual company for any property or against any risk or hazards, and the sovereign immunity of the authority is hereby waived to the limit of the scope and extent of such insurance as may be in force as to any claim payable by such insurance.
10. To invest such funds as are not required for immediate disbursements.
11. To establish and maintain such bank accounts as may be necessary or convenient.
12. To employ as officers a president, and such vice-presidents and assistant secretaries as may be necessary or convenient, and to employ technical and maintenance personnel and such other officers and employees, permanent or temporary, as the authority may require, to establish the conditions of their employment, and to delegate to such officers and employees such powers or duties as the authority shall deem proper provided that all such employment must comply with the provisions of Section 11-308(2) of this Article.
13. To take such further actions, not inconsistent with this Act, as are commonly engaged in by public or corporate bodies of this character as the authority may deem necessary or convenient to effectuate the purposes of the authority.
14. To enter into partnerships, joint ventures, and other business arrangements with any legal entity to effectuate the purposes of the authority.
15. To adopt such rules and regulations for the government of its internal affairs as the authority deems necessary or appropriate, to administer or enforce this Article and its activities thereunder, provided that all such rules and regulations shall be filed for record in the Tribal secretary's office and the Tribal Court clerk's office prior to being given any force or effect.
16. To operate, manage, use, and control, including entering into leases as herein before provided, such real or personal property which the Tribal Council shall assign to its use.
17. To pay over yearly to the Tribe such percentage of its profits which, according to sound business practices, will be available for general expenditure for purposes other than business development, due regard being had for further expansion of Tribal business enterprises, contingencies, bad debts, and the like.
18. To exercise any and all powers of a domestic corporation under the Winnebago Business Corporation Act not inconsistent with this Article.
19. To engage at any lawful business.
20. To use the name "Winnebago Enterprises, Ltd." in any of its business activities within or without the Winnebago reservation, and to incorporate or hold stock in such other corporations as may be necessary or convenient. The authority and not other domestic or foreign corporation may use such name within the Winnebago reservation.

21. To exercise, in conformance with Tribal law, the power of eminent domain excepting land or interests therein held by any other agency of the Winnebago Tribe of Nebraska, in order to further the purposes and powers expressed in this Article.
22. To promulgate rules and regulations not inconsistent with other Tribal law, which rules and regulations shall have the force of statute, and to provide penalties for the violation thereof not in excess of two hundred dollars ($200.00) for each violation or day of violation of the authority's rules and regulations, concerning the following:
    A. The zoning of areas designated as industrial or commercial areas by Tribal legislation into such subcategories of use as may be necessary to protect the public and environment and to further the highest and best use of the property;
    B. The protection of the environment, both physical and human, from unacceptable hazard or risk created by industrial and commercial activities within the Winnebago reservation;
    C. Construction and maintenance of industrial and commercial buildings, plants, facilities, and all appurtenances thereunto belonging, including specifically, but not limited to, construction and building codes for industrial and commercial improvements, fire codes, emergency procedures to be followed in case of industrial accident or casualty, reporting requirements, and the issuance of building permits;
    D. At such time or times as the Tribe may have contracted the issuance of Indian Trader's Licenses pursuant to (25 U.S.C. Sections 261 et seq.), (25 C.F.R. Sections 251.1 et seq.), the issuance and supervision of Licensed Indian Traders within the Winnebago reservation;
    E. The maintenance of worker's compensation insurance or other similar insurance to protect industrial and commercial employees in hazardous occupations or otherwise against loss of wages, medical bills, and other loss or damages as a result of injuries sustained in the course of their employment;
    F. The protection of employees, invitees, and guests of industrial and commercial establishments from unnecessary risk of injury by providing for safety and health requirements of industrial and commercial establishments;
    G. The establishment of minimum public liability insurance requirements necessary to protect the public from personal injury or property damage resulting from industrial and commercial activities;
    H. The establishment and regulation of the banking industry within the Winnebago reservation;
    I. The establishment and regulation of the insurance industry within the Winnebago reservation;
    J. The establishment and regulation of other financial institutions with the Winnebago reservation; provided, that such rules and regulations shall not be effective until a certified copy or original thereofhave been filed in the office of the Tribal Court clerk and the Tribal secretary for at least thirty days, and, provided further, that the Tribal Council may rescind or modify any such rules when in their judgment it is in the best interest of the Tribe to do so. [TCR 89-36]

11A-319 Securing financial assistance. It is the purpose and intent of this Article to authorize the authority to do any and all things necessary or desirable and not prohibited to secure the financial aid or cooperation of the federal government or private sources of capital in the undertaking, construction, maintenance, or operation of arty project of the authority, subject to the limitation contained in this Article. [TCR 89-36]

11A-320 Certain property laws do not apply. No ordinance or other enactment of the Tribe with respect to the acquisition, operation, or disposition of Tribal property shall be applicable to the authority in its in its operations pursuant to this Article, unless specifically so stated herein, or in the ordinance in question if the Winnebago Economic Development Authority is specifically referred to. [TCR 89-36]

OBLIGATIONS

11A-321	Authority to issue obligations.	11A-325	Manner of issuance and sales.
11A-322	No personal liability on obligations.	11A-326	Obligations are negotiable.
11A-323	No Tribal liability on obligations.	11A-327	Security for obligations.
11A-324	Obligations are tax exempt.	11A-328	Actions to be filed for record.

11A-321 Authority to issue obligations. The authority may issue obligations from time to time in its purposes and may also issue refunding obligations for the purposes of paying or retiring obligations previously issued by it, provided that the authority shall file notice of intent to issue such obligations in the offices of the Tribal secretary and the Tribal Court clerk and at least thirty days prior to the first issuance of any particular obligation or series of obligations. The authority may issue such types of obligations as it may determine, including obligations on which the principal and interest are payable.

1. Exclusively from the income and revenues for the project financed with the proceeds of such obligations, or with such income and revenues together with a grant from the federal government, in an allowable cost, in aid of the project.
2. Exclusively from the income and revenues of certain designed projects whether or not they are financed in whole or in part with the proceeds of such obligations, or
3. From its revenues generally, any of such obligations may be additionally secured by a pledge of any revenues of any project or other project or other property of the authority. All such obligations shall be subject to the jurisdiction of the Tribal Court for enforcement of their provisions wherever they may be physically located. [TCR 89-36]

11A-322 No personal liability on obligations. Neither the board of trustees of the authority, nor any person executing the obligations shall be personally liable on the obligations by reason of issuance thereof. [TCR 89-36]

11A-323 No Tribal liability on obligations. The notes and other obligations of the authority shall not be a debt of the Tribe as the Tribe, and the obligations shall so state on their face. [TCR 89-36]

11A-324 Obligations are tax exempt. Obligations of the authority are declared to be issued for an essential public and governmental purpose, and to public instrumentalities and, together with interest thereon and income therefrom, shall be exempt from taxes imposed by the Tribe. The tax exemption provisions of this Article shall be considered part of the security for the repayment of obligations, and shall constitute, by virtue of this Article and without necessity of being restated in the obligations, a contract between (a) the authority aid the Tribe, and (b) the holders of obligations and each of them, including all transferees of the obligations from time to time. [TCR 89-36]

11A-325 Manner of issuance and sales. Obligations shall be issued and sold in the following manner:

1. Obligations of the authority shall be authorized by a resolution adopted by the vote of a majority of the full board and may be issued in one or more series.
2. The obligations shall bear such dates, mature at such times, bear interest at such rates, be in such denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rack or priority, be executed in such manner, be payable in such medium of payment and at such places, and be subject to such terms of redemption, with or without premium, as such resolution may provide.
3. The obligations may be sold at public or private sale at not less than par value.

4. In case any of the numbers of the board of trustees of the authority whose signatures appear on any obligations cease to be trustees before the delivery of such obligations, the signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if the trustees had remained in office until delivery.
5. Whenever necessary, the authority shall comply in the issuance of its obligations with the securities laws of the federal government. [TCR 89-36]

11A-326 Obligations are negotiable. Obligations of the authority shall be fully negotiable unless otherwise stated on their face. In any suit, action or proceeding involving the validity or enforceability of any obligation of the authority or the security therefore, any such obligations by the authority to aid in financing a project pursuant to this Article shall be conclusively deemed to have been issued for such purpose in the absence of fraud by the holder or with the knowledge of the holder thereof in the procurement of the obligations, and the project for which such obligation was issued shall be conclusively deemed to have been placed, located and carried out in accordance with the purposes and provisions of this Article in the absence of fraud in the procurement of such obligation or security. [TCR 89-36]

11A-327 Security for obligations. In connection with the issuance of obligations or incurring of obligations under leases and to secure the payment of such obligations, the authority, subject to the limitations in this Article, may:

1. Pledge all or part of its gross or net rents, fees, or revenues to which its right then exists or may thereafter come into existence.
2. Provide for the powers and duties of obligees, and limit their liabilities; and provide the terms and conditions on which such obligees may enforce and covenant or their rights securing or relating the obligations.
3. Covenant against pledging all or any part of its rents, fees and revenues or personal property to which its title or right then exists or may thereafter come into existence or permitting or suffering any lien on such revenues or property.
4. Covenant with respect to limitations on its right to sell, lease, or otherwise dispose of any project or any Partner thereof.
5. Covenant as to the obligations to be issued and as to the issuance of such obligations in escrow or otherwise, and as to the use and dispositions of the proceeds thereof.
6. Provide for the replacement of lose, destroyed, or mutilated obligations.
7. Covenant against extending the time for the payment of its obligations or interest thereon.
8. Redeem the obligations and covenant for their redemption and provide the terms and conditions thereof.
9. Covenant concerning the rents and fees to be charged in the operation of a project or projects, the amount to be raised each year or other period of time by rents, fees and other revenues, and as to the use and disposition to be made thereof.
10. Create or authorize the creation of special funds for monies held for construction or operating costs, debt service, reserves or other purposes and covenant as to the use and disposition of the monies held in such funds.
11. Prescribe the procedure, if any, by which the terms of any contract with holders of obligations my be amended or abrogated, the proportion of outstanding obligations the holders of which must consent thereto, and the matter in which such consent may be given.
12. Covenant as to the, use, maintenance, and replacement of its real or personal property, the insurance to be carried thereon, the use and disposition of insurance monies.
13. Covenant as to the right, liabilities, powers, and duties arising upon the breach by it of any covenant, condition or obligation.

14. Covenant and prescribe as to events of default and terms and conditions upon which any or all of its obligations may become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived.
15. Vest any obligees or any proportion of them the right to enforce the payment of the obligations or any covenants, security or relating to the obligations.
16. Exercise all or any part of combination of the powers granted in this Section.
17. Make covenants other than, and in addition to the covenants expressly authorized in this Section, or of like or different character.
18. Make any covenants and do any acts and things necessary or convenient or desirable in order to secure its obligations, or, in the absolute discretion of the authority, tending to make the obligations more marketable although the covenants, acts, or things are not enumerated in this Section. [TCR 89-36]

11A-328 Actions to be filed for record. The minutes and record of all action of the authority with respect to obligations issued by it shall be filed for record in the office of the Tribal secretary, and the office of the clerk of the Tribal Court. [TRC 89-36]

MISCELLANEOUS PROVISIONS

11A-329	Reports.	11A-335	Personal policies to be enacted.
11A-330	Acquisition of interests prohibited.	11A-336	Judicial notice.
11A-331	Compliance with federal law.	11A-337	Special certificate of incorporation.
11A-332	Fidelity bonds.	11A-338	Separability of provisions.
11A-333	Property of authority as public property.	11A-339	Records and audit.
		11A-340	Authorization of appropriations.
11A-334	No execution on authority property.	11A-341	Rules, regulations and procedures.

11A-329 Reports. The authority shall submit quarterly and annual reports, signed by the president of the board, to the Tribal Council showing:

1. A summary of the period activities.
2. The financial condition of the authority.
3. The condition of the properties under the authority's management or control.
4. A summary of any unprofitable ventures and plans for correction.
5. Any significant problems and accomplishments.
6. Plans for the future.
7. Such other information as the authority or the Tribal Council shall deem pertinent. [TCR 89-36]

11A-330 Acquisition of interests prohibited. During his/her tenure and for three years thereafter, no member of the board of trustees or executive officer of the authority or any other public official who exercises any responsibilities or functions with regard to a project of the authority, shall voluntarily acquire any interest, direct or indirect, in any matter or in any property included or planned to be included in any project, or in any contract or proposed contract relating to the project; unless, prior to such acquisition, he/SHE discloses his/her interest in writing to the authority and such disclosure is entered upon the minutes of the authority, and the member of the board of trustees, executive officer, or the public official shall not participate in arty action by the authority relating to the property or contract in which he/she has an interest. If a member of the board of trustees, executive officer, or the public official involuntarily acquires any such interest, or voluntarily or involuntarily acquired any such interest prior to appointment or employment, in any such event, the person shall immediately disclose his/her interest in writing to the authority, and such disclosure shall be entered upon the minutes of the authority relating to the property or contract in winch s/he has any such interest. Any violation of the foregoing provisions of this Section shall constitute misconduct in office and a violation of the public trust and shall subject the party to removal from the board or other office held, and make such party liable to the authority for any and all profits of any kind or character which s/he may have obtained by virtue of the violation of his/her trust. This Section shall not be applicable to the acquisition of any interest in obligations of the authority issued in connection with any project, or to the execution of agreements by banking institutions for the deposit or handling of funds in connection with a project or to act as trustee under any trust indenture, or to utility service rates which are fixed or controlled by a governmental agency. [TCR 89-36]

11A-331 Compliance with federal law. Each project developed or operated under a contract providing for federal financial assistance shall be developed and operated in compliance with all requirements of such contract, and applicable federal legislation, and with all regulation and requirements of set forth from time to time by, the federal government in connection with such assistance. [TCR 89-36]

11A-332 Fidelity bonds. The authority shall obtain or provide for the obtaining of adequate fidelity bonds for all officers and employees handling case, or authorized to sign checks or obligations or to certify vouchers. [TCR 89-36]

11A-333 Property of authority as public property. The property of the authority is declared to be public property used for essential public and governmental purposes of the Winnebago Tribe of Nebraska. [TCR 89-36]

11A-334 No execution on authority property. All property within the Winnebago reservation including funds acquired or held by the authority pursuant to this Article shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same, nor shall any judgment against the authority be deemed to be a charge or lien upon such property. However, the provisions, of this Section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge, or hen given by the authority on its rents, fees, or revenues, or to enforce any purchase money mortgage upon lands purchased by the authority with the proceeds of the note secured by such purchase money mortgage. [TCR 89-36]

11A-335 Personnel policies to be enacted. There shall be a personnel policy manual which shall be approved by the board of trustees. [TCR 89-36]

11A-336 Judicial notice. The Tribal Court shall take judicial notice of this Article, and of all rules and regulations of the authority. [TCR 89-36]

11A-337 Special certificate of incorporation. The Tribal secretary is directed to issue a special Certificate of incorporation to the authority in the name of "Winnebago Enterprises, Ltd." in substantially the following form:

OFFICE OF THE SECRETARY
WINNEBAGO TRIBE OF NEBRASKA
CERTIFICATE OF INCORPORATION

To all Whom these Presents shall Come, Greetings:

WHEREAS, The Winnebago Tribe of Nebraska Economic Development Act of 1989 has authorize the Winnebago Economic Development Authority to conduct business as "Winnebago Enterprises, Ltd.", and said Act has been of filed in the office of the secretary of the Winnebago Tribe of Nebraska.

NOW, THEREFORE, I, the undersigned, Secretary of the Winnebago Tribe of Nebraska, by virtue of the powers vested in me by law, do hereby issue this Certificate of Incorporation.

IN TESTIMONY WHEREOF, I hereunto set my hand and cause to be affixed the Great Seal of the Winnebago Tribe of Nebraska.

Filed at the Winnebago Tribal Headquarters, this ____ay of _____A.D., 20__.

_____
Secretary
BY:_____

[TCR 89-36]

11A-338 Separability of provisions. Notwithstanding any other evidence of the intent of the Tribal Council, it is hereby declared to be the intent of the Tribal Council that if any provision of this Article or the application thereof to any persons or circumstances shall be adjudged by any court of competent jurisdiction to be invalid**,** such judgment shall not affect, impair, or invalidate the remainder of this Article or its application to their persons and circumstances, but shall be confined in its operation to the provisions of this Act or the application thereof to the persons and circumstances directly involved in the controversy in which such judgment shall have been rendered. [TCR 89-36]

11A-339 Records and audit. The Winnebago Economic Development Authority shall keep records as the Tribal Council shall prescribe and as will facilitate an effective audit. [TCR 89-36]

11A-340 Authorization of appropriations. There is authorized to be appropriated to carry out this Article an amount not to exceed ten million dollars ($10,000,000.00). [TCR 89-36]

11A-341 Rules, regulations and procedures. The Tribal Council shall prescribe such rules, regulations and procedures to carry out the provisions of this Article in any cases in which the Winnebago Economic Development Authority is not authorized by the terms of this Article to prescribe its own rules on the subject. [TCR 89-36]

MANAGEMENT OF TRIBAL ENTERPRISES

11A-342 General management provisions.
11A-343 Achieving independent status as a Tribal enterprise.
11A-344 Chartering of independent Tribal enterprises.

11A-342 General management provisions. All Tribal enterprises not separately established by legislation or organized pursuant to Tribal laws regulating corporations, partnerships, or joint ventures shall be managed by the authority. [TCR 89-36]

11A-343 Achieving independent status as a Tribal enterprise. Whenever, in the discretion of the board of trustees a project or enterprise of the authority has attained such measure of stability arid profitability that it has attained the capacity to function and grow as a separate self-sustaining entity, the board of trustees shall recommend to the Tribal Council in writing the chartering of the entity as a Tribal enterprise independent from the oversight of the authority. [TCR 89-36]

11A-344 Chartering of independent Tribal enterprises. Upon receiving a recommendation from the authority that a project of the authority be reorganized as a separate entity the Tribal Council shall review the recommendation and may either:

1. Authorize the establishment of the project as an independent Tribal enterprise by special legislation, and enact the necessary legislation to establish that enterprise; or
2. Authorize the establishment of the project as an independent Tribal enterprise pursuant to the general Tribal corporation, partnership, or joint venture laws, and authorized by legislation a person to organize such entity with such restrictions as may be necessary or useful; or
3. Direct the authority to conduct further studies, or investigate other alternatives, or take such other action upon such recommendations as the Tribal Council may deem appropriate. [TCR 89-36]

TITLE 11B
LIMITED LIABILITY COMPANY CODE
(As adopted January 13, 2010)

SUMMARY OF CONTENTS

SECTION		ARTICLE-PAGE
1. TABLE OF REVISIONS		ii
2. TABLE OF CONTENTS		iii
3. ARTICLE 1: GENERAL PROVISIONS		1-1
4. ARTICLE 2: OPERATING AGREEMENT AND DEALING WITH LLC		2-1
5. ARTICLE 3: OWNERS AND MANAGERS		3-1
6. ARTICLE 4: FINANCE		4-1
7. ARTICLE 5: NON-LIQUIDATING DISTRIBUTIONS		5-1
8. ARTICLE 6: OWNERSHIP AND TRANSFER OF PROPERTY		6-1
9. ARTICLE 7: DISSOLUTION		7-1
10. ARTICLE 8: MERGER		8-1
11. ARTICLE 9: LIMITED LIABILITY COMPANIES WHOLLY-OWNED BY THE TRIBE		9-1
Subpart 1	General Provisions for Tribally-Owned LLC's	9-1
Subpart 2	Special Formation Requirements for Tribally-Owned LLC's	9-3
Subpart 3	Management of Tribally-Owned LLC's	9-4
Subpart 4	Decisions and Voting for Tribally-Owned LLC's	9-5
Subpart 5	Distributions for Tribally-Owned LLC's	9-6
Subpart 6	Additional Reports and Audits	9-7
Subpart 7	Actions Against Tribally-Owned LLC's	9-8

TITLE 11B
TABLE OF REVISIONS

The following table is included in this title as a guide for determining whether each article properly reflects the current version. This table will be updated with the revision of each article.

Through usage and supplementation, pages in bound titles can be inserted and removed when sections are revised on an article-by-article basis. This table should be placed before the Table of Contents in the title.

The "Article" column lists each article, and the "Section" column lists any corresponding sections that have been revised, in sequence. The "Revised Date" column reflects the effective date of the revision (e.g., "6/20/15"). If an article is not listed in the table, it has not been revised since the December 2015 Winnebago Tribal Code update and distribution.

Article	**Section**	**Revised Date**

TITLE 11B
LIMITED LIABILITY COMPANY CODE
(As adopted January 13, 2010)

ARTICLE 1
GENERAL PROVISIONS

11B-101 Short Title.
11B-102 Purposes; Sovereign Immunity.
11B-103 Scope.
11B-104 Applicable law.
11B-105 Definitions.
11B-106 Name.
11B-107 Registered Office and Registered Agent.
11B-108 Tribe as an Owner.
11B-109 Nature of business.
11B-110 Execution of Documents.
11B-111 Filing.
11B-112 Certificate of Status.
11B-113 Execution by Judicial Act.
11B-114 Interstate application.

ARTICLE 2
OPERATING AGREEMENT AND DEALING WITH LLC

11B-201 Articles of Organization.
11B-202 Agency Power of Owners and Managers.
11B-203 Admission of Owners and Managers.
11B-204 Knowledge of or Notice to Owner or Manager.
11B-205 Liability of Owners to Third Parties.
11B-206 Parties to Action
11B-207 Authority to Sue.

ARTICLE 3
OWNERS AND MANAGERS

11B-301 Management.
11B-302 Duties.
11B-303 Limitation of Liability and Indemnification.
11B-304 Voting.
11B-305 Records and Information.
11B-306 Admission of Owners.
11B-307 Dissociation.

ARTICLE 4
FINANCE

11B-401 Contributions.
11B-402 Liability for Contribution.
11B-403 Allocation of Profits and Losses.

ARTICLE 5
NON-LIQUIDATING DISTRIBUTIONS

11B-501 Interim Distributions.
11B-502 Allocation of Distributions.
11B-503 Distribution Upon Partial Redemption.
11B-504 Distribution Upon Dissociation.
11B-505 Distribution in Kind.
11B-506 Right to Distribution.
11B-507 Limitations of Distributions.
11B-508 Liability for Wrongful Distribution.

ARTICLE 6
OWNERSHIP AND TRANSFER OF PROPERTY

11B-601 Ownership of LLC Property.
11B-602 Transfer of Property.
11B-603 Nature of Interest.
11B-604 Assignment of LLC Interest.
11B-605 Rights of Judgment Creditor.
11B-606 Right of Assignee to Become an Owner.
11B-607 Powers of Legal Representative.

ARTICLE 7
DISSOLUTION

11B-701 Dissolution.
11B-702 Judicial Dissolution.
11B-703 Winding Up.
11B-704 Distribution of Assets.
11B-705 Articles of Dissolution.
11B-706 Known Claims Against Dissolved LLC.
11B-707 Unknown or Contingent Claims.

ARTICLE 8
MERGER, CONVERSION, AND DOMESTICATION
(As revised March 30, 2015)

11B-801 Definitions.
11B-802 Merger.
11B-803 Approval of Merger.
11B-804 Plan of Merger.
11B-805 Articles of Merger.
11B-806 Effects of Merger.
11B-807 Right to Object.
11B-808 Conversion.
11B-809 Conversions of Domestic LLC into Another Business Entity.
11B-810 Plan of Conversion for Domestic LLC into Another Business Entity.
11B-811 Filing of Certificate of Conversion for Domestic LLC.
11B-812 Effect of Conversion of Domestic LLC into Another Business Entity.
11B-813 Conversion of Business Entity into a Domestic LLC.
11B-814 Plan of Conversion Business Entity into a Domestic LLC.
11B-815 Effect of Conversion of Business Entity in Domestic LLC.
11B-816 Domestication.
11B-817 Action on Plan of Domestication by Domesticating LLC.
11B-818 Filings Required for Domestication; Effective Date.
11B-819 Effect of Domestication.
11B-820 Restrictions on Approval of Mergers, Conversions, and Domestications.
11B-821 Article Not Exclusive.

ARTICLE 9
LIMITED LIABILITY COMPANIES WHOLLY-OWNED BY THE TRIBE

SUBPART 1
GENERAL PROVISIONS FOR TRIBALLY-OWNED LLC'S

11B-911 Tribally-Owned Companies.
11B-912 Tribally-Owned Subsidiary Companies.
11B-913 Privileges and Immunities.
11B-914 Ownership.
11B-915 Project Companies with Non-Tribal Owners.
11B-916 Purpose of Tribally-Owned LLC's.
11B-917 Waiver of Sovereign Immunity.

SUBPART 2
SPECIAL FORMATION REQUIREMENTS FOR TRIBALLY-OWNED LLC'S

11B-921 Formation.
11B-922 Additional Requirements for the Articles of Organization.

SUBPART 3
MANAGEMENT OF TRIBALLY-OWNED LLC'S

11B-931 Management.

SUBPART 4
DECISIONS AND VOTING FOR TRIBALLY-OWNED LLC'S

11B-941 Voting.

SUBPART 5
DISTRIBUTIONS FOR TRIBALLY-OWNED LLC'S

11B-951 Distributions of Income.

SUBPART 6
ADDITIONAL REPORTS AND AUDITS

11B-961 Audit.
11B-962 Financial, Business, and Planning Information.

SUBPART 7
ACTIONS AGAINST TRIBALLY-OWNED LLC'S

11B-971 Court Actions By a Tribe Authorized.
11B-972 Tribal Approval Required.
11B-973 Relief Available.

TITLE 11B
LIMITED LIABILITY COMPANY CODE
(As adopted January 13, 2010)
ARTICLE 1
GENERAL PROVISIONS

11B-101	Short Title.	11B-108	Tribe as an Owner.
11B-102	Purposes; Sovereign Immunity.	11B-109	Nature of business.
11B-103	Scope.	11B-110	Execution of Documents.
11B-104	Applicable law.	11B-111	Filing.
11B-105	Definitions.	11B-112	Certificate of Status.
11B-106	Name.	11B-113	Execution by Judicial Act.
11B-107	Registered Office and Registered Agent.	11B-114	Interstate application.

11B-101 Short Title. This Title shall be known as the "Winnebago Tribe of Nebraska Limited Liability Company Code." [TCR 10-42]

11B-102 Purposes; Sovereign Immunity.

1. The purpose of this Code is to provide for economic development of the Winnebago Tribe of Nebraska and its members by:
   a. Providing the legal framework for organizing individually-owned business entities in order to expand the private business sector on the Reservation; and
   b. Authorizing the formation of wholly-owned Tribal business entities for managing the Tribe's economic activities separate from the general affairs of its Tribal Council, with the ability to enter into legally-binding contracts and commercial relationships without the need for Tribal Council action.
2. By the adoption of this Code, the Tribe does not waive its sovereign immunity or consent to suit in any court, federal, tribal or state, and neither the adoption of this Code, nor the incorporation of any limited liability company hereunder, shall be construed to be a waiver of the sovereign immunity of the Tribe or a consent to suit against the Tribe in any court. [TCR 10-42]

11B-103 Scope. This Code shall apply to all limited liability companies organized under its provisions or which elect to accept the provisions of this Code. [TCR 10-42]

11B-104 Applicable Law. The companies organized and created under this Code shall be subject to this Code, and all other laws of the Tribe. By organizing and creating a company under this Code, the company and its Owners shall be considered to have entered into a consensual relationship with the Tribe and agree to be subject to the full extent of the Tribe's legislative, regulatory and adjudicatory jurisdiction. Unless displaced by particular provisions of this Code or other Tribal law, the principles of law and equity supplement this Code. [TCR 10-42]

11B-105 Definitions. Terms used in this Code have the following meaning:

1. "Articles of Organization" means the articles filed under Section 201 and those articles as amended or restated.
2. "Corporation" means a domestic corporation for profit organized under the law of the Tribe or a foreign corporation formed under the laws of any other jurisdiction.

3. "Distribution" means a direct or indirect transfer by a limited liability company of money or other property to or for the benefit of its Owners in respect of their interests.
4. "Entity" includes an individual, a general partnership, limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation or any other legal or commercial entity.
5. "Foreign" refers to limited liability companies, corporations and limited partnerships organized under the laws of a jurisdiction other than the Tribe.
6. "Limited Liability Company" or "Domestic Limited Liability Company" means an organization formed under this Code, except as provided for in Section 801(1).
7. "Limited Liability Company Interest" or "Interest in the Limited Liability Company" or "Owner's Interest" means an Owner's rights in the limited liability company, including rights to distributions, profits and losses, and to participate in management, as specified in the Operating Agreement.
8. "LLC" means a limited liability company.
9. "Majority in Interest" means an Owner or Owners holding more than fifty percent (50%) of the total voting interests in the limited liability company excluding any interest which is not to be counted as voting on a matter as described elsewhere in this Code.
10. "Manager" or "Managers" means the person(s) or entity(ies) designated to manage the LLC pursuant to the Articles of Organization and Operating Agreement.
11. "Office of the Secretary" means the Office of the Secretary of the Tribal Council as provided by Article III, Section 3 of the Tribal Constitution, or that individual's designee.
12. "Operating Agreement" means an agreement in writing among all of the Owners as to the conduct of the business of a limited liability company and its relationships with its Owners.
13. "Organizer(s)" means the person(s) or entity(ies) which signs and delivers the Articles of Organization for filing to the Office of the Secretary.
14. "Owner" "Member" means a Person that is a member of a limited liability company or has ownership interest in a limited liability company. The term does not include a person that has dissociated as a member under Section 307.
15. "Person" includes a natural person, Tribal Entity and an organization such as a general partnership, limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, or a corporation.
16. "Reservation" means all lands under the jurisdiction of the Tribe, including all lands within the boundaries of the Tribe's Reservation, individual Tribal member allotments, whether located on or off the Reservation, and all lands held in trust by the United States of America for the benefit of the Tribe.
17. "State" includes a state, territory, or possession of the United States and the District of Columbia.
18. "Tribal Entity" includes the Tribe, the Tribal Council, a general partnership, limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation, a program, a department, an administrative agency or any other legal, commercial or governmental entity of the Tribe.
19. "Tribal Council" means the Tribal Council as established by Article III of the Tribal Constitution as the governing body of the Tribe.
20. "Tribal Constitution" means the Constitution of the Winnebago Tribe of Nebraska.
21. "Tribal Corporation" means a corporation wholly-owned by the Tribe and duly formed pursuant to the Tribe's Business Corporation Code, Title 11, Section 11-001, *et seq*.
22. "Tribal Court" means the Winnebago Tribal Court as established by Article X of the Tribal Constitution.
23. "Tribally-owned LLC" means a limited liability company wholly-owned by the Tribe with the Tribe as its sole Owner.
24. "Tribe" means the Winnebago Tribe of Nebraska.

25. "Trust Land" means land held in trust by the United States for the benefit of the Tribe or its members. [TCR 10-42]

11B-106 Name.

1. The name of a limited liability company as set forth in its Articles of Organization must contain the words "limited liability company" or end with the abbreviation "L.L.C." or "LLC." The name may not contain language stating or implying that the limited liability company is organized for any purpose other than that permitted under Section 109, below.
2. The name of a domestic LLC shall be distinguishable from any LLC or corporation previously organized under the laws of the Tribe. [TCR 10-42]

11B-107 Registered Office and Registered Agent.

1. A limited liability company's registered agent is the company's agent for receiving service of process, notice, or demand required or permitted by law to be served on the company under the laws of the Tribe.
2. Each LLC shall continuously maintain a registered office and a registered agent within the exterior boundaries of the Winnebago Reservation. The registered office may, but need not, be the same as any of its places of business. The agent may be the same person then serving in a designated office of the Tribe rather than a specified person if the Tribe is an Owner in the LLC of which the Tribe's officer is the appointed agent.
3. An LLC may change its registered office or registered agent, or both, by filing a written notice of change containing the name of its registered agent and the street address of its registered office, as changed, with the Office of the Secretary and paying the filing fee.
4. The registered agent of an LLC may resign as a registered agent by delivering to the Office of the Secretary for filing a written statement of resignation and the appointment by the LLC of another registered agent. [TCR 10-42]

11B-108 Tribe as an Owner.

1. The Tribe shall form or become an Owner of a Tribally-owned LLC formed under this Code only upon approval of such action by the Tribal Council.
2. If the Tribe or a Tribal Entity is an Owner of an LLC formed under this Code, any action which the Tribe is required or permitted to take with respect to any vote, approval, consent, appointment, direction, or other matter shall be taken as specified in Section 941 of this Code or, as to actions related to the managers of a manager-managed LLC, as stated in the LLC's Operating Agreement approved by the Tribal Council.
3. If the Tribe is the sole Owner of an LLC formed under this Code, such Tribally-owned LLC shall possess all of the privileges and immunities of the Tribe, including the Tribe's sovereign immunity from suit except to the extent otherwise provided in its Operating Agreement.
4. If the Tribe or a Tribal Entity is an Owner with a Majority in Interest in an LLC formed under this Code, such LLC may possess the privileges and immunities of the Tribe, including sovereign immunity from suit, to the extent allowed by Federal law, this Code or its Operating Agreement.
5. In no event shall any manager not an Owner of an LLC in which the Tribe is an Owner, bind the Tribe in any manner; provided that the Tribe's interest as an Owner may be bound by manager or Owner actions as stated in this Code and the Operating Agreement of the LLC.
6. Nothing contained in this Code shall be construed as creating any liability or waiving of sovereign immunity of the Tribe in any manner; provided that the assets of the LLC in which the Tribe holds an interest may be subject to liabilities and claims unless otherwise provided herein. In no event shall any action taken by the Tribe as Owner concerning the exercise of any right or

privilege or discharge of any duty with respect to an interest in an LLC be construed as a waiver of immunity or creation of a liability on the part of the Tribe separate and apart from its interests as an Owner of the LLC.

7. For all Tribally-owned limited liability companies, the additional provisions of Part 9 of this Code shall apply. [TCR 10-42]

11B-109 Nature of Business. A limited liability company may be organized under this Code for any lawful purpose. Unless otherwise provided in its Operating Agreement, an LLC organized and existing under this Code has the same powers as an individual to do all things necessary and convenient to carry out its business, including but not limited to all of the following:

1. Consent to be sued, complain and defend in its name; provided, however, that if an LLC is Tribally-owned, or wholly-owned by another entity which itself is wholly-owned by the Tribe, it shall be entitled to and shall enjoy the Tribe's sovereign immunity from suit unless the Operating Agreement otherwise provides.
2. Purchase, take, receive, lease, or otherwise acquire and own, hold, improve, use, and otherwise deal in or with real, or personal property or any legal or equitable interest in real or personal property, wherever situated.
3. Sell, convey, mortgage, pledge, create a security interest in, lease, exchange, or otherwise dispose of all or any part of its property.
4. Lend money, property, and services to, and otherwise assist, its Owners and managers, if any.
5. Purchase, take, receive, subscribe for, or otherwise acquire and own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of and deal in and with shares or other interests in, or obligations of, any other enterprise or entity.
6. Make contracts and guarantees; incur liabilities; borrow money; issue notes, bonds, and other obligations; and secure any of its obligations by mortgage or pledge of all or part of its property, franchises, and income.
7. Lend money, invest and reinvest its funds, and receive and hold real or personal property as security for repayment.
8. Conduct its business, locate offices, and exercise the powers granted by this Code inside or outside of the Reservation.
9. Be a promoter, incorporator, partner, Owner, associate, or manager of any enterprise or entity.
10. Elect or appoint managers, agents, and employees, define their duties, and fix their compensation.
11. Pay pensions and establish pension plans, pension trusts, profit-sharing plans, and benefit or incentive plans for any or all of its current or former Owners, managers, employees, and agents.
12. Make donations to and otherwise devote its resources for the public welfare or for charitable, scientific, educational, humanitarian, philanthropic, or religious purposes.
13. Indemnify an Owner, manager, employee, officer or agent, or any other person.
14. Provide benefits or payments to Owners, managers, employees, and agents of the LLC, and to their estates, families, dependants or beneficiaries in recognition of the past services of the Owners, managers, employees, and agents of the LLC.
15. Make payments or donations, or do any other act not prohibited by law, that furthers the business of the LLC.
16. Transact any lawful business that the Owners or the managers find to be appropriate to promote and further the business and affairs of the limited liability company. [TCR 10-42]

11B-110 Execution of Documents.

1. Except as otherwise provided in this Code, any document required or permitted by this Code to be delivered for filing in accordance with Section 111 shall be executed by any of the following:

a. Any manager, if management of the LLC is vested in a manager or managers, or by an Owner, if management of the LLC is reserved to the Owners.
b. All organizers of the LLC if the LLC has not been organized. The name and address of each organizer shall be provided.
c. The name of the drafter of the document.

2. The person executing the document shall sign it and state beneath or opposite the signature the person's name and capacity in which the person signs.
3. The person executing the document may do so as an attorney-in-fact. Powers of attorney relating to the executing of the document need not be shown to nor filed with the Office of the Secretary. [TCR 10-42]

11B-111 Filing.

1. The Office of the Secretary shall receive all filings required under this Code and maintain the records of such filings pursuant to this Section, including but not limited to the Articles of Organization, amended or restated articles, annual reports, names and addresses of registered offices and agents, and, in the case of Tribally-owned LLC's, the Operating Agreement and amendments thereto, and other reports required by this Code.
2. Upon receipt of a document for filing under this Code, the Office of the Secretary shall ensure it meets the requirements herein and then shall stamp or otherwise endorse the date and time of receipt of the original, the duplicate copy, and, upon request, any additional copy received.
3. If the Office of the Secretary refuses to file a request, the Office shall return it to the person tendering the document for filing within five (5) business days after the date on which the document is received by the Office for filing, together with a brief written explanation of the reason for refusal.
4. Any document accepted by the Office of the Secretary shall be effective at the time of receipt unless a delayed effective date and/or time not more than ninety (90) days after receipt by the Office of the Secretary is specified in the document.
5. Fees. The Office of the Secretary shall impose a reasonable filing fee for each document filed, initially not to exceed the sum of $100.00, and an annual renewal fee initially not to exceed the sum of $25.00 during the life of the LLC, subject to any uniform schedule of fees as may hereafter be adopted by the Office from time to time. [TCR 10-42]

11B-112 Certificate of Status. Any person may obtain from the Office of the Secretary, upon request, a certificate of status for either a domestic or a foreign LLC. [TCR 10-42]

11B-113 Execution by Judicial Act. Any person who is adversely affected by the failure or refusal of any person to execute and file any articles or other document to be filed under this Code may petition the Tribal Court to direct the execution and filing of the articles or other document. Nothing in this Code, however, serves to waive any aspect of the Tribe's sovereign immunity, and any waiver thereof must be provided explicitly in the LLC's Articles of Organization and/or Operating Agreement. [TCR 10-42]

11B-114 Interstate Application. An LLC may conduct its business, carry on its operations and have and exercise the powers granted by this Code, in any sovereign Native Nation, any state, territory, district or possession of the United States, or in any foreign jurisdiction. [TCR 10-42]

TITLE 11B
ARTICLE 2
OPERATING AGREEMENT AND DEALING WITH LLC

11B-201 Articles of Organization.
11B-202 Agency Power of Owners and Managers.
11B-203 Admission of Owners and Managers.
11B-204 Knowledge of or Notice to Owner or Manager.
11B-205 Liability of Owners to Third Parties.
11B-206 Parties to Action
11B-207 Authority to Sue.

11B-201 Articles of Organization.

1. One or more persons may organize a limited liability company by signing and delivering the Articles of Organization to the Office of the Secretary for filing. The organizer(s) need not be Owners of the LLC at the time of organization or thereafter.
2. A limited liability company shall have one or more Owners.
3. The Articles of Organization shall contain all of and only the following information:
   a. A statement that the LLC is organized under this Code.
   b. A name for the LLC that satisfies the provisions of this Code.
   c. The street address of the registered office and the name of the registered agent at that office. For all LLC's formed pursuant to this Code and for all foreign LLC's operating within the Reservation, such office and agent shall be located within the exterior boundaries of the Reservation.
   d. If management of the LLC is vested in one or more managers, a statement to that effect.
   e. The name and address of each person organizing the LLC.
   f. Whether the LLC is Tribally-owned.
   g. If Tribally-owned, whether the LLC is to enjoy Tribal sovereign immunity and the scope of any waiver of that immunity.
4. The Office of the Secretary shall assign each Article of Organization an identification number.
5. Amendment. An LLC may amend its Articles of Organization at any time by delivering an amendment, with filing fee, for filing to the Office of the Secretary.
6. Effect of Delivery or Filing.
   a. An LLC is formed when the Articles of Organization become effective under Section 111(4).
   b. The Office of the Secretary's filing of the Articles of Organization is conclusive proof that the LLC is organized and formed under this Code. [TCR 10-42]

11B-202 Agency Power of Owners and Managers.

1. Except as provided in subsection 2, below:
   a. Each Owner is an agent of the LLC, but not of any of the other Owners, for the purpose of its business.
   b. The act of any Owner, including the execution in the name of the LLC of any instrument for apparently carrying on in the ordinary course of business the business of the LLC, binds the LLC in the particular matter, unless the person with whom the Owner is dealing has knowledge that the Owner has no authority to act in this matter.
   c. If the Tribe is an Owner, the Tribe's authority shall be exercised pursuant to Section 941.
2. If management of the LLC is vested in one or more managers:
   a. No Owner, solely by being an Owner, is an agent of the LLC or of the other Owners.

b. Each manager is an agent of the LLC, but not for the other Owners, for the purpose of its business. The act of any manager, including the execution in the name of the LLC of any instrument for apparently carrying on the ordinary course of business of the LLC, binds the LLC unless the manager has, in fact, no authority to act for the LLC in the particular matter, and the person with whom the manager is dealing has knowledge that the manager has no authority to act in the matter.

3. No act of an Owner or, if management of the LLC is vested in one or more managers, of a manager that is not apparently authorized for the carrying on in the ordinary course of business the business of the LLC, shall bind the LLC unless in fact authorized at the time of the transaction or at any other time. [TCR 10-42]

11B-203 Admissions of Owners and Managers.

1. Except as provided in Section 203(2)(b), an admission or representation made by any Owner concerning the business of an LLC within the scope of the Owner's actual authority may be used as evidence against the LLC in any legal proceeding.
2. If management of the LLC is vested in one or more managers:
   a. An admission or representation made by a manager concerning the business of an LLC within the scope of the manager's authority may be used as evidence against the LLC in any legal proceeding.
   b. The admission or representation of any Owner, acting solely in the Owner's capacity as an Owner, is not evidence against the LLC in any legal proceeding. [TCR 10-42]

11B-204 Knowledge of or Notice to Owner or Manager.

1. Except as provided in Section 204(2)(b), notice to any Owner of any matter relating to the business of an LLC, and the knowledge of an Owner acting in the particular matter, acquired while an Owner or known by the person at the time of becoming an Owner, and the knowledge of any Owner who reasonably could and should have communicated it to the acting Owner, operate as notice to or knowledge of the LLC.
2. If management of the LLC is vested in one or more managers:
   a. Notice to any manager of any matter relating to the business of the LLC, and the knowledge of the manager acting in the particular matter acquired while a manager or known by the person at the time of becoming a manager and the knowledge of any other manager who reasonably could and should have communicated it to the acting manager, operate as notice to or knowledge of the LLC.
   b. Notice to or knowledge of any Owner while the Owner is acting solely in the capacity of an Owner is not notice to or knowledge of the LLC. [TCR 10-42]

11B-205 Liability of Owners to Third Parties. The debts, obligations, and liabilities of an LLC, whether arising in contract, tort, or otherwise, shall be solely the debts, obligations, and liabilities of the LLC. Except as otherwise specifically provided in this Code, an Owner or manager of an LLC is not personally liable for any debt, obligation, or liability of an LLC, as defined in the Operating Agreement. [TCR 10-42]

11B-206 Parties to Action. An Owner of an LLC is not a proper party to a proceeding by or against an LLC solely by reason of being an Owner of the LLC, except if any of the following exist:

1. The object of the proceeding is to enforce an Owner's right against or liability to the LLC.
2. The action is brought by an Owner under Section 207. [TCR 10-42]

11B-207 Authority to Sue. Unless otherwise provided in the Operating Agreement, an action on behalf of an LLC may be brought in the name of the LLC by:

1. One or more Owners of the LLC, if authorized by a Majority in Interest of Owners, excluding the vote of any Owner who has an interest in the outcome of the action that is adverse to the interest of the LLC.
2. One or more managers of an LLC if the management of the LLC is vested in one or more managers, or if the managers are authorized to sue by a Majority in Interest of Owners.

Nothing contained herein shall be construed as authorizing actions of any kind whatsoever against the Tribe as Owner unless otherwise provided in the Operating Agreement. [TCR 10-42]

TITLE 11B
ARTICLE 3
OWNERS AND MANAGERS

11B-301 Management.
11B-302 Duties.
11B-303 Limitation of Liability and Indemnification.
11B-304 Voting.
11B-305 Records and Information.
11B-306 Admission of Owners.
11B-307 Dissociation.

11B- 301 Management.

1. Unless the Articles of Organization vest management in one or more managers, management of the LLC shall be vested in the Owners subject to any provision in the Operating Agreement or this Code restricting or enlarging the management rights and duties of any Owner or group of Owners.

   In an Owner-managed liability company, the following rules shall apply, subject to the provisions of the Operating Agreement or this Code:
   a. A difference arising among Owners as to a matter in the ordinary course of the activities of the LLC may be decided by a majority of the Owners.
   b. An act outside the ordinary course of activities of a limited liability company may be undertaken only with the consent of all the Owners.
2. If the Articles of Organization vest management in one or more managers, management of the business or affairs of the LLC shall be invested in the manager or managers subject to any provisions in the Operating Agreement or this Code restricting or enlarging the management rights and duties of any manager or group of managers. Unless otherwise provided in the Operating Agreement, the manager or managers:
   a. Shall be designated, appointed, elected, removed, or replaced by a vote of a Majority in Interest of the Owners.
   b. Need not be Owners of the LLC nor individuals.
   c. Unless earlier removed or earlier resigned, shall hold office until a successor is elected and qualified. [TCR 10-42]

11B-302 Duties. Unless otherwise provided in the Operating Agreement:

1. No Owner or manager shall act or fail to act in a manner that constitutes any of the following:
   a. A willful failure to deal fairly with the LLC or its Owners in connection with a matter in which the Owner or manager has a material conflict of interest.
   b. A violation of criminal law involving moral turpitude.
   c. A transaction from which the Owner or manager derived an improper personal profit.
   d. Willful misconduct.
2. Every Owner and manager shall account to the LLC and hold as trustee for it any improper personal profit derived by that Owner or manager without the consent of a majority of the disinterested Owners or managers, or other persons participating in the management of the LLC, from any of the following:
   a. A transaction connected with the organization, conduct, or winding up of the LLC.
   b. A use by an Owner or manager of the property of an LLC, including confidential or proprietary information or other matters entrusted to the person as a result of the person's status as Owner or manager.

c. Operating Agreement may impose duties on its Owners and managers that are in addition to, but not in abrogation of, those provided in subsection (1) above. [TCR 10-42]

11B-303 Limitation of Liability and Indemnification.

1. In this Section, "expenses" mean expenses of defending a lawsuit, including attorney's fees, and any civil judgment or penalty, or settlement payment in lieu thereof, paid in connection with a lawsuit against an Owner or manager in such capacity.
2. An LLC shall indemnify or allow expenses to each Owner and each manager for all reasonable expenses incurred with respect to a proceeding if that Owner or manager was a party to the proceeding in the capacity of an Owner or manager.
3. The Operating Agreement may alter or provide additional rights to indemnification or allowance of expenses to Owners and managers.
4. Notwithstanding subsections (2) and (3) above, an LLC may not indemnify an Owner or manager unless it is determined that the Owner or manager did not breach or fail to perform a duty to the LLC as provided in Section 302.
5. Unless otherwise provided in the Operating Agreement:
   a. An Owner or manager shall be conclusively presumed not to have breached or failed to perform a duty to the LLC to the extent that the Owner or manager has been successful on the merits or otherwise in the defense of the proceeding.
   b. In situations not described in paragraph (a), above, the determination of whether Owner or manager has breached or failed to perform a duty to the LLC shall be made by the vote of a Majority in Interest of the Owners, excluding any Owner who is a party to the same or related proceeding unless all Owners are parties. [TCR 10-42]

11B-304 Voting.

1. Unless otherwise provided in the Operating Agreement or this Section, and subject to subsection (2) below, an affirmative vote, approval, or consent as follows shall be required to decide any matter connected with the business of an LLC.
   a. If management of an LLC is reserved to the Owners, an affirmative vote, approval, or consent by a Majority in Interest of Owners.
   b. If the management of an LLC is vested in one or more managers, the affirmative vote, consent, or approval of more than fifty percent (50%) of the managers.
2. Unless otherwise provided in the Operating Agreement or this Code, the affirmative vote, approval, or consent of all Owners shall be required to do any of the following:
   a. Amend the Articles of Organization.
   b. Issue an interest in an LLC to any person.
   c. Adopt, amend, or revoke Operating Agreement.
   d. Allow an LLC to accept any additional contribution from an Owner.
   e, Allow a partial redemption of an interest in an LLC under Section 503.
   f, Value contributions of Owners under Section 401.
   g, Authorize a manager, Owner, or other person to do any act on behalf of the LLC that contravenes the Operating Agreement.
3. Unless otherwise provided in the Operating Agreement, if any Owner is precluded from voting with respect to a given matter, the value of the contribution represented by the interest in the LLC with respect to which the Owner would otherwise have been entitled to vote shall be excluded from the total contributions made to the LLC for purposes of determining the fifty percent (50%) threshold under Section 105(9) for that matter.
4. Unless otherwise provided in Operating Agreement or this Section, if all or part of an interest in the LLC is assigned under Section 604, the assigning Owner shall be considered the owner of the

assigned interest for purposes of determining the 50% threshold under Section 105(9) until the assignee of the interest in the LLC becomes an Owner under Section 606. [TCR 10-42]

11B-305 Records and Information.

1. An LLC shall keep at its principal place of business all of the following:
   a. A list, in alphabetical order, of each past and present Owner and, if applicable, manager.
   b. A copy of the Articles of Organization and all amendments to the articles, together with executed copies of any powers of attorney under which any articles were executed.
   c. A copy of the Operating Agreement and all amendments thereto.
   d. A record of all matters referred to in this Code as maintained in such records which are not otherwise specified in the Operating Agreement.
2. Upon reasonable request, an Owner may, at the Owner's own expense, inspect and copy during ordinary business hours any LLC record unless otherwise provided in the Operating Agreement.
3. Owners or, if the management of the LLC is vested in one or more managers, managers shall provide true and full information of all things affecting the Owners to any Owner or to the legal representative of any Owner upon reasonable request of the Owner or the legal representative.
4. Failure of an LLC to keep or maintain any of the records of information required under this Section shall not be grounds for imposing liability on any person for the debts and obligations of the LLC. [TCR 10-42]

11B-306 Admission of Owners.

1. In connection with the formation of an LLC, a person acquiring an LLC interest is admitted as an Owner upon formation unless the Operating Agreement otherwise provides.
2. After the formation of an LLC, a person acquiring an LLC interest is admitted as an Owner of the LLC as specified in the Operating Agreement or, if not so specified, by consent of all the other Owners, or, if the person is an assignee of another person's LLC interest, only pursuant to Section 606. [TCR 10-42]

11B-307 Dissociation.

1. A person ceases to be an Owner of an LLC upon the simultaneous occurrence of and at the same time of any of the following events:
   a. The Owner withdraws by voluntary act.
   b. The Owner is removed as an Owner in accordance with the Operating Agreement or this Code.
   c. Unless otherwise provided in the Operating Agreement or by the written consent of all Owners at the time of the event, the Owner does any of the following:
      i. Makes an assignment for the benefit of the creditors.
      ii. Files a petition in bankruptcy.
      iii. Becomes the subject of an order for relief under the federal bankruptcy laws or state or tribal insolvency laws.
      iv. Fails to gain dismissal of any federal bankruptcy or state or tribal insolvency proceeding within 120 days of commencement of an involuntary proceeding.
   d. Unless provided in the Operating Agreement or by the written consent of all Owners, if the Owner is an individual, either of the following occurs:
      i. The Owner's death.
      ii. The entry of an order by a court of competent jurisdiction adjudicating the Owner incompetent to manage the Owner's person or estate.

e. Unless otherwise provided in the Operating Agreement or by written agreement or by the written consent of all Owners at the time, if the Owner is a trust, corporation, partnership, or limited liability company upon liquidation, dissolution, or termination.

2. The Owners may provide in the Operating Agreement for other events the occurrence of which result in a person ceasing to be an Owner of the LLC.

3. Unless the Operating Agreement provides that an Owner does not have the power to withdraw by voluntary act from an LLC, the Owner may do so at any time by giving written notice to the other Owners or as provided in the Operating Agreement. If the Owner has the power to withdraw but the withdrawal is a breach of the Operating Agreement, the LLC may offset the damages against the amount otherwise distributable to the Owner, in addition to pursuing any remedies provided for in the Operating Agreement or otherwise available under applicable law. [TCR 10-42]

TITLE 11B
ARTICLE 4
FINANCE

11B-401 Contributions.
11B-402 Liability for Contribution.
11B-403 Allocation of Profits and Losses.

11B-401 Contributions.

1. An Owner's contributions to an LLC may consist of cash, property, or services rendered, or promissory notes or other written obligations to provide cash or property or to perform services.
2. The value of an Owner's contribution shall be determined in the manner provided in the Operating Agreement. If the Operating Agreement does not fix a value to a contribution, the value of a contribution shall be approved by a Majority in Interest of the Owners, shall be properly reflected in the records and information kept by the LLC under Section 305(1). The value of contributions so determined shall be binding and conclusive on the LLC and its Owners. [TCR 10-42]

11B-402 Liability for Contribution.

1. An obligation of an Owner to provide cash or property or to perform services as a contribution to an LLC is not enforceable unless specified in a writing signed by the Owner.
2. Unless otherwise provided in the Operating Agreement, an Owner is obligated to an LLC to perform any enforceable promise to provide cash or property or to perform services, even if the Owner is unable to perform because death, disability, or any other reason. If an Owner does not provide cash, property, or services as promised, the Owner is obligated at the option of the LLC to provide cash equal to that portion of the value of the stated contribution that has not been fulfilled.
3. Unless otherwise provided in the Operating Agreement, an Owner's obligation to provide cash or property or perform services as a contribution to the LLC may be compromised only by the written consent of all of the Owners. [TCR 10-42]

11B-403 Allocation of Profits and Losses. The profits and losses of an LLC shall be allocated among the Owners in the manner provided in the Operating Agreement. If the Owners do not enter into an Operating Agreement or the Operating Agreement does not provide otherwise, profits and losses shall be allocated on the basis of value of the contributions made by each Owner. [TCR 10-42]

TITLE 11B
ARTICLE 5
NON-LIQUIDATING DISTRIBUTIONS

11B-501	Interim Distributions.	11B-505	Distribution in Kind.
11B-502	Allocation of Distributions.	11B-506	Right to Distribution.
11B-503	Distribution Upon Partial Redemption.	11B-507	Limitations of Distributions.
11B-504	Distribution Upon Dissociation.	11B-508	Liability for Wrongful Distribution.

11B-501 Interim Distributions. Except as provided in this Section, an Owner is entitled to receive distributions from an LLC before the Owner's dissociation from the LLC and before its dissolution and winding up to the extent and at the times or upon the events specified in the Operating Agreement, or to the extent and at the times determined by the Owners or managers. [TCR 10-42]

11B-502 Allocation of Distributions. Distributions of cash or other assets of an LLC shall be allocated among the Owners as provided in Operating Agreement, or if the Operating Agreement does not so provide, on the basis of the value of the contributions made by each Owner. [TCR 10-42]

11B-503 Distribution Upon Partial Redemption. Except as provided in this Section, upon the distribution in partial liquidation of an Owner's interest, the redeeming Owner is entitled to receive the amount to which the Owner is entitled under the Operating Agreement and, if not otherwise provided in the Operating Agreement, the fair value of the redeemed interest based on the Owner's right to share in distributions from the LLC. [TCR 10-42]

11B-504 Distribution Upon Dissociation. Except as otherwise provided in this Section, upon an event of dissociation under Section 307 that does not cause dissolution of the LLC, a dissociating Owner is entitled to receive any distribution to which Owner is entitled under the Operating Agreement and, if not otherwise provided in the Operating Agreement, the fair market value of the Owner's interest in the LLC based on the Owner's rights to share in distributions from the LLC. [TCR 10-42]

11B-505 Distribution in Kind. Unless otherwise provided in the Operating Agreement:

1. An Owner may not demand and receive any distribution from an LLC in any form other than cash.
2. An Owner may not be compelled to accept a distribution of any asset in kind except for a liquidating distribution made proportionately. [TCR 10-42]

11B-506 Right to Distribution. At the time that an Owner becomes entitled to receive a distribution from an LLC, the Owner has the status of and is entitled to all remedies available to a creditor of the LLC with respect to the distribution; provided, however, that such right shall not in any way limit any other remedy available to such Owner under any other provision of applicable law of the Operating Agreement. [TCR 10-42]

11B-507 Limitations of Distributions.

1. An LLC may not declare or make a distribution to any of its Owners, if after giving effect to the distribution, any of the following would occur:
    a. The LLC would be unable to pay its debts as they become due in the usual course of business.

b. The fair market value of the LLC's total assets would be less than the sum of its total liabilities plus, unless the Operating Agreement provides otherwise, the amount that would be needed for the preferential rights upon dissolution of Owners, if any.

2. An LLC may base a determination that a distribution is not prohibited by subsection (1), above, on any of the following:
   a. Financial statements and other financial data prepared on the basis of accounting practices and principles that are reasonable under the circumstances.
   b. A fair market valuation or other method that is reasonable under the circumstances.
3. An LLC's indebtedness to an Owner incurred by reason of a distribution made in accordance with this Section is at parity with the LLC's indebtedness to its general unsecured creditors, except to the extent subordinated by written agreement. This Section does not affect the validity or priority of a security interest in an LLC's property that is created to secure the indebtedness to the Owner. [TCR 10-42]

11B-508 Liability for Wrongful Distribution.

1. Except as provided in subsection (2) below, an Owner (other than the Tribe or Tribal Entity) or manager who votes or assents to a distribution in violation of Section 507 or of the Operating Agreement is personally liable to the LLC for the amount of the excess distribution, subject to contribution from all other managers or Owners participating in such action.
2. An action to recover under this Section may be brought in the Tribal Court; however, a proceeding under this Section is barred unless it is brought within two (2) years after the date of the distribution.
3. Nothing in this Code serves to waive any aspect of the Tribe's sovereign immunity, and any waiver thereof must be provided explicitly in the LLC's Operating Agreement. [TCR 10-42]

TITLE 11B
ARTICLE 6
OWNERSHIP AND TRANSFER OF PROPERTY

11B-601 Ownership of LLC Property.
11B-602 Transfer of Property.
11B-603 Nature of Interest.
11B-604 Assignment of LLC Interest.
11B-605 Rights of Judgment Creditor.
11B-606 Right of Assignee to Become an Owner.
11B-607 Powers of Legal Representative.

11B-601 Ownership of LLC Property.

1. All property originally transferred to or acquired by an LLC is property of the LLC and not the Owners individually.
2. Property acquired with LLC funds is presumed to be LLC property.
3. Property may be acquired, held, and conveyed in the name of the LLC. [TCR 10-42]

11B-602 Transfer of Property. The property of an LLC may be transferred by an instrument of transfer executed by any Owner in the name of the LLC, unless management is vested in managers, in which case the document of transfer shall be executed by a manager, subject to any limitation that may be imposed by the Operating Agreement. [TCR 10-42]

11B-603 Nature of Interest. An LLC interest is personal property. [TCR 10-42]

11B-604 Assignment of LLC Interest.

1. Unless otherwise provided in the Operating Agreement:
   a. An LLC interest is assignable in whole or in part.
   b. An assignment of an LLC interest entitles the assignee to receive only the distributions and to share in the allocations of profits and losses to which the assignee would be entitled with respect to the assigned interest.
   c. An assignment of an LLC interest does not dissolve the LLC.
   d. Unless and until the assignee becomes an Owner of the LLC under Section 606, the assignment of an LLC interest does not entitle the assignee to participate in the management or exercise rights of an Owner.
   e. Unless and until the assignee of an LLC interest becomes an Owner of the LLC under Section 606, the assignor continues to be an Owner.
   f. The assignor of an LLC interest is not released from any personal liability arising under this Code as an Owner of the LLC solely as a result of the assignment.
2. Unless otherwise provided in the Operating Agreement, the granting of a security interest, lien, or other encumbrance in or against any or all of an Owner's LLC interest is not assignable and shall not cause the Owner to cease to have the power to exercise any rights or powers of an Owner. [TCR 10-42]

11B-605 Rights of Judgment Creditor. Upon application to a court of competent jurisdiction, including a court other than the Tribal Court having valid jurisdiction over an Owner, by any judgment creditor of the Owner, the court may charge the LLC interest of any Owner (other than the Tribe) with payment of the unsatisfied amount of the judgment. To the extent so charged, the judgment creditor has only the rights of an assignee of the Owner's LLC interest in distributions made by the LLC to Owners and other assigned interest holders in the usual course of business. This Section does not deprive any

Owner of the benefit of any exemption laws applicable to the LLC interest. In no event shall the Tribe's interest be attachable in abrogation of its sovereign immunity. [TCR 10-42]

11B-606 Right of Assignee to Become an Owner.

1. Unless otherwise provided in the Operating Agreement, an assignee of an LLC interest may become an Owner only if the other Owners unanimously consent.
2. An assignee of an LLC interest who becomes an Owner has, to the extent assigned, the rights and powers and is subject to the restrictions and liabilities of the assignor under the Operating Agreement and this Code.
3. Unless otherwise provided in the Operating Agreement, an assignor of an LLC interest is not released from any liability to the LLC without the written consent of all the Owners, whether or not the assignee becomes an Owner. [TCR 10-42]

11B-607 Powers of Legal Representative. If an Owner who is an individual dies or a court of competent jurisdiction adjudges the Owner to be incompetent to manage his or her person or property, the Owner's personal representative, administrator, guardian, conservator, trustee, or other legal representative shall have all the rights of an assignee of the Owner's interest. If an Owner is a corporation, trust, partnership, limited liability company, or other entity and is dissolved or terminated, the powers of that Owner may be exercised by its legal representative or successor. [TCR 10-42]

TITLE 11B
ARTICLE 7
DISSOLUTION

11B-701 Dissolution.
11B-702 Judicial Dissolution.
11B-703 Winding Up.
11B-704 Distribution of Assets.
11B-705 Articles of Dissolution.
11B-706 Known Claims Against Dissolved LLC.
11B-707 Unknown or Contingent Claims.

11B-701 Dissolution. A limited liability company is dissolved and its affairs shall be wound up upon the happening of the first of the following:

1. The occurrence of events specified in the Operating Agreement.
2. The written consent of all Owners.
3. An event of dissociation of an Owner, unless otherwise provided in the Operating Agreement or continuation is consented to by all remaining Owners.
4. Entry of a decree of judicial dissolution under Section 702. [TCR 10-42]

11B-702 Judicial Dissolution.

1. In a proceeding by or for an Owner, the Tribal Court or court of competent jurisdiction may order dissolution of an LLC if any of the following is established:
   a. That it is not reasonably practicable to carry on the business of the LLC.
   b. That the LLC is not acting in conformity with its Operating Agreement.
   c. That one or more managers are acting or will act in a manner that is illegal, oppressive, or fraudulent.
   d. That one or more Owners in control of the LLC are acting or will act in a manner that is illegal, oppressive, or fraudulent.
   e. That LLC assets are being misapplied or wasted.
2. If the Tribe is an Owner of the LLC, any action under this Section must be brought in the Tribal Court, unless explicitly otherwise provided in the Operating Agreement. Nothing in this Section may be construed as a waiver of the Tribe's sovereign immunity from suit, and any waiver thereof must be provided explicitly in the LLC's Operating Agreement. [TCR 10-42]

11B-703 Winding Up.

1. A dissolved LLC continues its legal existence but may not carry on any business except that which is appropriate to wind up and liquidate its business.
2. Unless otherwise provided in its Operating Agreement:
   a. The business of the LLC may be wound up by any of the following:
      i. The Owners or managers who have authority to manage the LLC before dissolution.
      ii. In a judicial dissolution, the person(s) designated by the Tribal Court or court of competent jurisdiction.
   b. The persons winding up the business of the LLC may do all of the following in the name of and on behalf of the LLC:
      i. Collect its assets.
      ii. Prosecute and defend suits.
      iii. Take any action necessary to settle and close the business of the LLC.
      iv. Dispose of and transfer the property of the LLC.

v. Discharge or make provision for discharging the liabilities of the LLC.
vi. Distribute to the Owners any remaining assets of the LLC.

3. Dissolution of a LLC does not do any of the following:
   a. Transfer title to the LLC's property.
   b. Prevent transfer of all or part of an Owner's interest.
   c. Prevent commencement of a civil, criminal, administrative, or investigatory proceeding by or against the LLC.
   d. Abate or suspend a civil, criminal, administrative, or investigatory proceeding pending by or against the LLC at the time of dissolution.
   e. Terminate the authority of the registered agent of the LLC.
   f. Alter the limited liability of an Owner. [TCR 10-42]

11B-704 Distribution of Assets. Upon the winding up of an LLC, the assets shall be distributed in the following order:

1. To creditors, including to the extent permitted by law, Owners, and former Owners in satisfaction of liabilities of the LLC.
2. Unless otherwise provided in the Operating Agreement, to Owners and former Owners in satisfaction of liabilities for distributions under Sections 501, 503 and 504.
3. Unless otherwise provided in the Operating Agreement, to Owners and former Owners first for the return of their contributions in proportion to their respective values and, thereafter, in proportion to their respective rights to share in distributions from the LLC before dissolution. [TCR 10-42]

11B-705 Articles of Dissolution. After the dissolution of an LLC under Section 701, the LLC may file articles of dissolution with the Office of the Secretary that include the following:

1. The name of the LLC.
2. The date of filing of its Articles of Organization.
3. The statutory grounds under Section 701 for dissolution.
4. The delayed effective date of the articles of dissolution under Section 111(3), if applicable. [TCR 10-42]

11B-706 Known Claims Against Dissolved LLC.

1. A dissolved LLC may notify its known claimants in writing of the dissolution and specify a procedure for making claims.
2. A claim against the LLC is barred if:
   a. A claimant who was given written notice under subsection (1) above, does not deliver the claim, in writing, to the LLC by the deadline specified in the notice; or
   b. A claimant whose claim is rejected by the LLC does not commence a proceeding to enforce the claim within ninety (90) days after receipt of the rejection notice. [TCR 10-42]

11B-707 Unknown or Contingent Claims. A claim not barred under Section 706 may be enforced:

1. Against the dissolved LLC, to the extent of its undistributed assets.
2. If the dissolved LLC's assets have been distributed in liquidation, against an Owner of the LLC, other than the Tribe, to the extent of the Owner's proportionate share of the claim or of the assets of the LLC distributed to the Owner in liquidation, whichever is less, but an Owner's total

liability for all claims under this Section may not exceed the total value of assets at the time distributed to the Owner. [TCR 10-42]

TITLE 11B
ARTICLE 8
MERGER, CONVERSION, AND DOMESTICATION
(As revised March 30, 2015)

11B-801	Definitions.
11B-802	Merger.
11B-803	Approval of Merger.
11B-804	Plan of Merger.
11B-805	Articles of Merger.
11B-806	Effects of Merger.
11B-807	Right to Object.
11B-808	Conversion.
11B-809	Conversions of Domestic LLC into Another Business Entity.
11B-810	Plan of Conversion for Domestic LLC into Another Business Entity.
11B-811	Filing of Certificate of Conversion for Domestic LLC.
11B-812	Effect of Conversion of Domestic LLC into Another Business Entity.
11B-813	Conversion of Business Entity into a Domestic LLC.
11B-814	Plan of Conversion Business Entity into a Domestic LLC.
11B-815	Effect of Conversion of Business Entity in Domestic LLC.
11B-816	Domestication.
11B-817	Action on Plan of Domestication by Domesticating LLC.
11B-818	Filings Required for Domestication; Effective Date.
11B-819	Effect of Domestication.
11B-820	Restrictions on Approval of Mergers, Conversions, and Domestications.
11B-821	Article Not Exclusive.

11B-801 Definitions.

1. "Business Entity" in this Article means Domestic Business Entity and a Foreign Business Entity.
2. "Domestic Business Entity" means a Corporation, incorporated under the laws of the Winnebago Tribe of Nebraska; a Domestic LLC, organized under this Code; a tribally-charted entity of the Tribe, an unincorporated cooperative of the Tribe; a Section 17 Corporation owned by the Tribe; or other tribally-formed entity, that is party to the merger.
3. "Foreign Business Entity" means a Foreign Limited Liability Company; a Foreign Limited Partnership, or a Foreign Corporation, that is party to the merger.
4. Unless the context requires otherwise, in this Article "LLC" includes a Domestic LLC and a Foreign LLC.
5. "Organizational Documents" includes articles of organization, operating agreements, articles of incorporation, bylaws, partnership agreements, agreements of trust and declarations of trust, and any other basic records that create an entity's organization and determine its internal governance and relations among person that own it, have an interest in it, or are Owners of it. [TCR 10-42, 15-68]

11B-802 Merger.

1. Unless otherwise provided in its Organizational Documents, one or more Business Entities may merge with or into one or more Domestic LLC's or one or more other Foreign LLC's as provided in the plan of merger.
2. Interests or shares in a Business Entity that is a party to a merger may be exchanged for or converted into cash, property, obligations, or interest in the surviving LLC. [TCR 10-42, 15-68]

11B-803 Approval of Merger.

1. Unless otherwise provided in the Operating Agreement, a Domestic LLC that is a party to a proposed merger shall approve the plan of merger by an affirmative vote by all of the Owners.
2. Unless otherwise provided in the Operating Agreement, the Manager or Managers of a Domestic LLC may not approve a merger without also obtaining the approval of the LLC's Owners under subsection (1), above.
3. Each Business Entity, other than a Domestic LLC, that is a party to a proposed merger shall approve the merger in the manner and by the vote required by the laws applicable to the Business Entity and in accordance with their respective Organizational Documents.
4. Each Business Entity that is a party to the merger shall have any rights to abandon the merger as provided for in the plan of merger or in the laws applicable to the Business Entity or in accordance with its Organizational Documents.
5. Upon approval of a merger, the LLC shall notify its Owners of the approval and of the effective date of the merger.
6. After a merger is authorized, and at any time before the Articles of Merger are filed with the Office of the Secretary, the planned merger may be abandoned, subject to any contractual rights, without further action on the part of the shareholders or other owners, in accordance with the procedures set forth in the plan of merger or, if none is set forth, in the manner determined by the governing body of any Business Entity that is a party to the merger. [TCR 10-42, 15-68]

11B-804 Plan of Merger.

The plan of merger shall include all of the following:

1. The name, form of Business Entity, and identity of the jurisdiction governing each Business Entity that is a party to the merger and the name, form of business entity, and identity of the jurisdiction of the surviving LLC with, or into, which each other Business Entity proposes to merge.
2. The terms and conditions of the proposed merger.
3. The manner and basis of converting the interests in each Business Entity that is a party to the merger into shares, interests, obligations, or other securities of the surviving Business Entity or into cash or other property in whole or in part.
4. Amendments to the Articles of Organization or other similar governing document of the surviving LLC.
5. Other necessary or desirable provisions relating to the proposed merger. [TCR 15-68]

11B-805 Articles of Merger.

1. The surviving LLC shall deliver to the Office of the Tribal Council Secretary Articles of Merger, executed by each party to the plan of merger, that include all of the following:
   a. The plan of merger.
   b. The name of the surviving or resulting LLC.
   c. The effective date and time of the merger.
   d. A statement as to whether the surviving LLC is Tribally-Owned.
   e. If Tribally-Owned, a statement as to whether the surviving LLC enjoys the Tribe's sovereign immunity.
   f. A statement that the plan of merger was approved by each Domestic LLC that is a party to the merger in accordance with 11B-803.
2. A merger takes effect upon the effective date of the Articles of Merger. [TCR 10-42, 15-68]

11B-806 Effects of Merger.

A merger has the following effects:

1. The Business Entities must become a single Entity, which shall be the Entity designated in the plan of merger as the surviving LLC.
2. Each Business Entity, except the surviving LLC, ceases to exist.
3. The surviving LLC possesses all of the rights, privileges, immunities, and powers of each merged Business Entity and is subject to all of the restrictions, disabilities, and duties of each merged Business Entity.
4. All property and all debts, including contributions, and each interest belonging to or owed to each of the Business Entities are vested in the surviving LLC without further act.
5. Title to all real estate and any interest in real estate, vested in any Business Entity, does not revert and is not in any way impaired because of the merger.
6. The surviving LLC has all the liabilities and obligations of each of the Business Entities and any claim existing or action or proceedings pending by or against any merged Business Entity may be prosecuted as if the merger had not taken place, or the surviving LLC may be substituted in the action.
7. The rights of creditors and any liens on the property of any Business Entity survive the merger.
8. The interests in a Business Entity that are to be converted or exchanged into interest, cash, obligations, or other property under the terms of the plan of merger are converted and the former interest holders are entitled only to the rights provided in the plan of merger of the rights otherwise provided by law.
9. The Articles of Organization of the surviving LLC is amended to the extent provided in the Articles of Merger. [TCR 10-42, 15-68]

11B-807 Right to Object.

Unless otherwise provided in the Operating Agreement, upon receipt of the notice required by 11B-803(5), an Owner who did not vote in favor of the merger may, within twenty (20) days after the date of the notice, voluntarily dissociate from the LLC under Section 11B-307(3) and receive fair value for the Owner's LLC interest under Section 11B-504. [TCR 10-42, 15-68]

11B-808 Conversion.

1. Unless otherwise provided in its Organizational Documents, a Domestic LLC may convert to another form of Business Entity if it:
   a. Follows the procedures and requirements under this Article relating to conversions; and
   b. If the conversion is permitted under the applicable law of the jurisdiction that governs the organization of the Business Entity into which the Domestic LLC is converting.
2. Unless otherwise provided in its Organizational Documents, a Business Entity other than a Domestic LLC may convert into a Domestic LLC if it:
   a. Follows the procedures and requirements under this Article relating to conversions; and
   b. If the conversion is permitted under the applicable law of the jurisdiction that governs the Business Entity.
3. The filing requirements of Section 11B-111 apply to conversions under this Article.
4. Notwithstanding its prior approval, a plan of conversion under this Article may be amended before the conversion takes effect if the amendment is approved by the Owners of the converting Domestic LLC or Business Entity in the same manner as was required for the approval of the original plan of conversion. [TCR 15-68]

11B-809 Conversion of Domestic LLC into Another Business Entity.

A Domestic LLC may convert into another Business Entity if all of the requirements of 11B-810 and 11B-811 are satisfied. [TCR 15-68]

11B-810 Plan of Conversion for Domestic LLC into Another Business Entity.

1. Unless subsection (3) applies, the Domestic LLC proposing to convert shall adopt a plan of conversion that includes all of the following:
   a. The name of the Domestic LLC, the name of the Business Entity into which the Domestic LLC is converting, the type of Business Entity into which the Domestic LLC is converting, identification of the statute that will govern the internal affairs of the surviving Business Entity, the street address of the surviving Business Entity, the street address of the Domestic LLC if different from the street address of the surviving Business Entity, and the principal place of business of the surviving Business Entity.
   b. The terms and conditions of the proposed conversion, including the manner and basis of converting the ownership interest of the Domestic LLC into ownership interests or obligations of the surviving Business Entity, into cash, into other consideration that may include ownership interests or obligations of an entity that is not a party to the conversion, or into a combination of cash and other consideration.
   c. The terms and conditions of the Organizational Documents that are to govern the surviving Business Entity.
   d. Any other provisions with respect to the proposed conversion that the Domestic LLC considers as necessary or desirable.
2. A unanimous vote of the Owners of the Domestic LLC entitled to vote is required to adopt a plan of conversion under subsection (1), unless its Operating Agreement provides otherwise.
3. If the Domestic LLC has not commenced business; has not issued any ownership interests; has no debts or other liabilities; and has not received any payments, or has returned any payments it has received after deducting any amount disbursed for payment of expenses, for subscriptions for its ownership interests, subsections (1) and (2) do not apply and the Owners of the Domestic LLC, may approve of the conversion of the Domestic LLC into another Business Entity by majority vote. To effect the conversion, a Majority of the Owners must execute and file a certificate of conversion under 11B-811. [TCR 15-68]

11B-811 Filing of Certificate of Conversion for Domestic LLC.

If the plan of conversion is approved under 11B-810(2), the Domestic LLC shall file any formation documents required to be filed under the laws governing the internal affairs of the surviving Business Entity, in the manner prescribed by those laws, and shall file a certificate of conversion with the Office of the Secretary. The certificate of conversion shall include all of the following:

1. Unless 11B-810(3) applies, a copy of the plan of conversion.
2. The name of the Domestic LLC that is converting into another business entity.
3. The type of business entity the Domestic LLC is converting into and the jurisdiction under which the surviving Business Entity shall be governed.
4. A statement that the Owners of the Domestic LLC have adopted the plan of conversion under 11B-810(2), or that the Owners of the Domestic LLC have approved of the conversion under 11B-810(3), as applicable.
5. A statement that the surviving Business Entity will furnish a copy of the plan of conversion, on request and without cost, to any Owner of the Domestic LLC.
6. The registered agent and registered office, of the Domestic LLC before and after conversion.

7. A Statement whether the Domestic LLC is Tribally-Owned. [TCR 15-68]

11B-812 Effect of Conversion of Domestic LLC into Another Business Entity.

When a conversion from a Domestic LLC into another Business Entity takes effect, all of the following apply:

1. The Domestic LLC converts into the surviving Business Entity, and the Organizational Documents of the Domestic LLC are canceled.
2. Except as otherwise provided in this Code, the surviving Business Entity is organized under and subject to the organizational laws of the jurisdiction of the surviving Business Entity as stated in the Certificate of Conversion.
3. The surviving Business Entity has all of the liabilities of the Domestic LLC. The conversion of the Domestic LLC into a Business Entity under this Section shall not be considered to affect any obligations or liabilities of the Domestic LLC incurred before the conversion or the personal liability of any person incurred before the conversion, and the conversion shall not be considered to affect the choice of law applicable to the Domestic LLC with respect to matters arising before the conversion.
4. The title to all real estate and other property and rights owned by the Domestic LLC remain vested in the surviving Business Entity without reversion or impairment.
5. The surviving Business Entity is considered to be the same entity that existed before the conversion and is considered to be organized on the date that the Domestic LLC was originally organized.
6. The ownership interests of the Domestic LLC that were to be converted into ownership interest or obligations of the surviving Business Entity or into cash or other property are converted.
7. Unless otherwise provided in the plan of conversion, the Domestic LLC is not required to wind up its affairs or pay its liabilities and distribute its assets on account of the conversion, and the conversion does not constitute dissolution of the Domestic LLC.
8. The Organizational Documents of the surviving Business Entity are as provided in the plan of conversion.
9. All other provisions of the plan of conversion apply. [TCR 15-68]

11B-813 Conversion of Business Entity into a Domestic LLC.

A Business Entity may convert into a Domestic LLC if all of the requirements of 11B-814 and 11B-815 are satisfied.

11B-814 Plan of Conversion Business Entity into a Domestic LLC.

1. A Business Entity proposing to convert into a Domestic LLC shall adopt a plan of conversion that includes all of the following:
    a. The name of the Business Entity, the type of Business Entity that is converting, identification of the statute that governs the internal affairs of the Business Entity, the name of the surviving Domestic LLC into which the Business Entity is converting, the street address of the surviving Domestic LLC, the street address of the Business Entity if different from the street address of the surviving Domestic LLC, and the principal place of business of the surviving Domestic LLC.
    b. The terms and conditions of the proposed conversion, including the manner and basis of converting the ownership interests of the Business Entity into ownership interests of the surviving Domestic LLC, into cash, into other consideration that may include ownership

interests or obligations of an entity that is not a party to the conversion, or into a combination of cash and other consideration.

c. The terms and conditions of the Organizational Documents that are to govern the surviving Domestic LLC.

d. Any other provisions with respect to the proposed conversion that the Business Entity considers necessary or desirable.

2. If a plan of conversion is adopted by the Business Entity under subsection (1), the plan of conversion is submitted for approval in the manner required by the law governing the internal affairs of that Business Entity.

3. If the plan of conversion is approved under subsections (1) and (2), the Business Entity shall file a Certificate of Conversion with the Office of the Office of the Secretary. The Certificate of Conversion shall include all of the following:

a. A copy of the plan of conversion.

b. A statement that the Business Entity has obtained approval of the plan of conversion under subsection (2).

c. A statement that the surviving Domestic LLC will furnish a copy of the plan of conversion, on request and without cost, to any Owner of the Business Entity.

d. The registered agent and registered office, record agent and record office, or other similar agent and office of the surviving Domestic LLC before and after conversion.

e. The type of Business Entity and the date and location of jurisdiction where the Business Entity was formed prior to converting into a Domestic LLC.

f. A statement whether the surviving Domestic LLC is Tribally-Owned.

g. Submission of Articles of Organization for the surviving Domestic LLC that meet all of the requirements of this Code. [TCR 15-68]

11B-815 Effect of Conversion of Business Entity into Domestic LLC.

When a conversion of a Business Entity into a Domestic LLC takes effect, all of the following apply:

1. The Business Entity converts into the surviving Domestic LLC. Except as otherwise provided in this Section, the surviving Domestic LLC is organized under and subject to this Code.

2. The surviving Domestic LLC has all of the liabilities of the Business Entity. The conversion of the Business Entity into a Domestic LLC under this Section shall not be considered to affect any obligations or liabilities of the Business Entity incurred before the conversion or the personal liability of any person incurred before the conversion, and the conversion shall not be considered to affect the choice of law applicable to the Business Entity with respect to matters arising before conversion.

3. The title to all real estate and other property and rights owned by the Business Entity remains vested in the surviving Domestic LLC without reversion or impairment.

4. A proceeding pending against the Business Entity may be continued as if the conversion had not occurred, or the surviving Domestic LLC may be substituted in the pending proceeding for the Business Entity.

5. The surviving Domestic LLC is considered to be the same entity that existed before the conversion and is considered to be organized on the date that the Business Entity was originally organized.

6. The ownership interests of the Business Entity that were to be converted into ownership interests or obligations of the surviving Domestic LLC or into cash or other property are converted.

7. Unless otherwise provided in a plan of conversion, the Business Entity is not required to wind up its affairs or pay its liabilities and distribute its assets on account of the conversion, and the conversion does not constitute a dissolution of the Business Entity.

8. The Organizational Documents of the Domestic LLC are as provided in the plan of conversion.

9. All other provisions of the plan of conversion apply. [TCR 15-68]

11B-816 Domestication.

1. A Foreign LLC may become a Domestic LLC pursuant to this section, sections 11B-817 to 11B-819, and a plan of domestication, if:
   a. The Foreign LLC's governing statute authorizes the domestication; and
   b. The Foreign LLC complies with its governing statute in effecting the domestication.
2. A Domestic LLC may become a Foreign LLC pursuant to this section, sections 11B-817 to 11B-819, and a plan of domestication, if:
   a. The Foreign LLC's governing statute authorizes the domestication; and
   b. The Foreign LLC complies with its governing statute in effecting the domestication.
3. A plan of domestication shall include all of the following:
   a. The name of the domesticating company before domestication and the jurisdiction of its governing statute;
   b. The name of the domesticated company after domestication and the jurisdiction of its governing statute;
   c. The terms and conditions of the domestication, including the manner and basis for converting interests in the domesticating company into any combination of money, interests in the domesticated company, and other consideration; and
   d. The Organizational Documents of the domesticated company that are, or are proposed to be, in a record. [TCR 15-68]

11B-817 Action on plan of domestication by domesticating LLC.

1. A plan of domestication must be consented to:
   a. By all the members, subject to section 11B-820, if the domesticating company is a Domestic LLC; and
   b. As provided in the domesticating company's governing statute, if the company is a Foreign LLC.
2. Subject to any contractual rights, after a domestication is approved, and at any time before articles of domestication are delivered to the Office of the Secretary for filing under section 11B-818, a domesticating limited liability company may amend the plan or abandon the domestication:
   a. As provided in the plan; or
   b. Except as otherwise prohibited in the plan, by the same consent as was required to approve the plan. [TCR 15-68]

11B-818 Filings required for domestication; effective date.

1. After a plan of domestication is approved, a domesticating company shall deliver to the Office of the Secretary for filing articles of domestication, which must include:
   a. A statement, as the case may be, that the company has been domesticated from or into another jurisdiction;
   b. The name of the domesticating company and the jurisdiction of its governing statute;
   c. The name of the domesticated company and the jurisdiction of its governing statute;
   d. The date the domestication is effective under the governing statute of the domesticated company;
   e. If the domesticating company was a Domestic LLC, a statement that the domestication was approved as required by the Winnebago Tribe of Nebraska Limited Liability Company Code; and

f. If the domesticating company was a Foreign LLC, a statement that the domestication was approved as required by the governing statute of the other jurisdiction.

2. A domestication becomes effective:
   a. When the articles of organization takes effect, if the domesticated company is a Domestic LLC; and
   b. According to the governing statute of the domesticated company, if the domesticated organization is a Foreign LLC. [TCR 15-68]

11B-819 Effect of domestication.

1. When a domestication becomes effective:
   a. The company is deemed to:
      i. Be organized under and subject to the laws of the Winnebago Tribe of Nebraska if a Foreign LLC, or be organized and subject to the laws of the foreign jurisdiction if a Domestic LLC, for all purposes;
      ii. The domesticated company is for all purposes the company that existed before the domestication; and
      iii. Have been organized on the same date as it was originally incorporated.
   b. The title to all real and personal property, both tangible and intangible, of the company remains in the company once domesticated, without reversion or impairment;
   c. All debts, obligations, or other liabilities of the domesticating company continue as debts, obligations, or other liabilities of the domesticated company to the extent it would not impair the sovereign immunity of the domesticating company should it become a tribally-owned company;
   d. An action or proceeding pending by or against a domesticating company may be continued as if the domestication had not occurred to the extent it would not impair the sovereign immunity of the domesticating company should it become a tribally-owned company;
   e. Except as prohibited by the laws of the Winnebago Tribe of Nebraska, all of the rights, privileges, immunities, powers, and purposes of the domesticating company remain vested in the domesticated company; and
   f. Except as otherwise provided in the plan of domestication, the terms and conditions of the plan of domestication take effect.
2. A domesticated company that is a Foreign LLC consents to the jurisdiction of the courts of Winnebago Tribe of Nebraska to enforce any debt, obligation, or other liability owed by the domesticating company, if, before the domestication, the domesticating company was subject to suit in on the debt, obligation, or other liability to the extent it would not impair the sovereign immunity of the domesticating company should it become a tribally-owned company.
3. If a Domestic LLC has adopted and approved a plan of domestication under section 11B-816 providing for the company to be domesticated in a foreign jurisdiction, a statement surrendering the company's articles of organization must be delivered to the Office of the Secretary for filing setting forth:
   a. The name of the company;
   b. A statement that the articles of organization is being surrendered in connection with the domestication of the company in a foreign jurisdiction;
   c. A statement that the domestication was approved as required by the Winnebago Tribe of Nebraska Limited Liability Company Code; and
   d. The jurisdiction of formation of the domesticated Foreign LLC. [TCR 15-68]

11B-820 Restrictions on approval of mergers, conversions, and domestications.

1. If a member of a constituent, converting, or domesticating limited liability company will have personal liability with respect to a surviving, converted, or domesticated organization, approval or amendment of a plan of merger, conversion, or domestication are ineffective without the consent of the member, unless:
   a. The company's operating agreement provides for approval of a merger, conversion, or domestication with the consent of fewer than all the members; and
   b. The member has consented to the provision of the operating agreement.
2. A member does not give the consent required by subsection (1) of this section merely by consenting to a provision of the operating agreement that permits the operating agreement to be amended with the consent of fewer than all the members. [TCR 15-68]

11B-821 Article not exclusive.

Article 9 does not preclude an entity from being merged, converted, or domesticated under law other than the Winnebago Tribe of Nebraska Limited Liability Company Code. [TCR 15-68]

TITLE 11B
ARTICLE 9
LIMITED LIABILITY COMPANIES WHOLLY-OWNED BY THE TRIBE

SUBPART 1
GENERAL PROVISIONS FOR TRIBALLY-OWNED LLC'S

11B-911 Tribally-Owned Companies.
11B-912 Tribally-Owned Subsidiary Companies.
11B-913 Privileges and Immunities.
11B-914 Ownership.
11B-915 Project Companies with Non-Tribal Owners.
11B-916 Purpose of Tribally-Owned LLC's.
11B-917 Waiver of Sovereign Immunity.

11B-911 Tribally-Owned Companies. There are hereby authorized to be created limited liability companies wholly-owned by the Tribe, with the Tribe as the sole Owner. Tribally-owned limited liability companies shall be created by a duly adopted resolution of the Tribal Council. The organizer shall file in accordance with Section 111. When the organizer files the Articles of Organization and the Operating Agreement of a Tribally-owned LLC, a certified copy of the resolution authorizing the formation of the LLC and approving the articles shall be included. Tribally-owned LLC's shall be considered to be instrumentalities of the Tribe. [TCR 10-42]

11B-912 Tribally-Owned Subsidiary Companies. There are hereby authorized to be created by resolution of the Board of Directors of a Tribally-owned limited liability company or of a Tribal Corporation, or of a wholly-owned subsidiary of such a Tribally-owned LLC or Tribal Corporation, subsidiary LLC's to be wholly-owned by the parent Tribally-owned LLC or parent Tribal Corporation, which shall be instrumentalities of the Tribe. The organizer of such a Tribally-owned subsidiary LLC shall file in accordance with Section 111. When the organizer files the Articles of Organization and the Operating Agreement of the Tribally-owned subsidiary LLC, a certified copy of a resolution of the Board of Directors of the parent Tribally-owned LLC or parent Tribal Corporation authorizing the formation of the subsidiary LLC and approving the articles shall be included. [TCR 10-42]

11B-913 Privileges and Immunities. The limited liability companies established under Sections 911 and 912 shall be considered to be instrumentalities of the Tribe, and their officers and employees considered officers and employees of the Tribe, created for the purpose of carrying out authorities and responsibilities of the Tribal Council for economic development of the Tribe and the advancement of its Tribal members. Such LLC's, their directors, officers, managers and employees shall, therefore, be entitled to all of the privileges and immunities enjoyed by the Tribe, including but not limited to immunities from suit in Federal, State and Tribal courts and from Federal, State, and local taxation or regulation. [TCR 10-42]

11B-914 Ownership.

1. No Ownership interest in any LLC in which the Tribe is an Owner may be alienated unless approved by the Tribal Council. Further, no Ownership interest in any Tribally-owned subsidiary LLC may be alienated unless approved by a duly adopted resolution of the Board of Directors of the parent Tribally-owned LLC or parent Tribal Corporation.
2. All interests in any Tribally-owned LLC shall be held by and for a Tribe, or in the case of a wholly-owned subsidiary LLC, by the parent Tribally-owned LLC or parent Tribal Corporation. No individual member of the Tribe shall have any personal ownership interest in any LLC organized under this Section, whether by virtue of such person's status as a member of a Tribe, as an officer of a Tribe's Government, or otherwise. [TCR 10-42]

11B-915 Project Companies with Non-Tribal Owners. Any LLC created pursuant to this Section, including subsidiary LLC's, may form or own interests or shares in partnerships, corporations, or other limited liability companies with other governmental or non-governmental entities or persons under the laws of the Tribe or any other jurisdiction ("Project Companies"); provided, however, that the partial ownership interest in such Project Companies shall not diminish or affect the privileges and immunities of the Tribally-owned LLC's or Tribally-owned subsidiary LLC's created pursuant to this Section. [TCR 10-42]

11B-916 Purpose of Tribally-Owned LLC's. All Tribally-owned LLC's, whether directly or indirectly owned, shall state in their Operating Agreement the purpose of the LLC that relates to the overall needs, priorities, goals, and objectives of the Tribe's government, including how the LLC will contribute to Tribal economic policy and further the goals of self-determination and economic self-sufficiency. [TCR 10-42]

11B-917 Waiver of Sovereign Immunity. The limited liability companies established under Sections 911 and 912 may only waive the privileges and immunities granted under Section 913 in the following manner:

1. The LLC may specifically grant limited waivers of its immunity from suit and consent to be sued in Tribal Court or another court of competent jurisdiction or consent to binding arbitration pursuant to the procedures and authorities set forth in the LLC's Operating Agreement; provided, however, that
    a. any such waiver or consent to suit granted pursuant to the LLC's Operating Agreement shall in no way extend to any action against the Tribe, nor shall it in any way be deemed a waiver of any of the rights, privileges and immunities of the Tribe;
    b. any recovery against the LLC shall be limited to the assets of the LLC (or such portion of the LLC's assets as further limited by the waiver or consent) and the Tribe shall not be liable for the payment or performance of any of the obligations of the LLC, and no recourse shall be had against any assets or revenues of the Tribe in order to satisfy the obligations of the LLC; including assets of the Tribe leased, loaned, or assigned to the LLC for its use, without transfer of title; and
    c. any waiver of the LLC's immunities granted pursuant to the LLC's Operating Agreement shall be further limited or conditioned by the terms of such waiver.
2. The sovereign immunity of the LLC shall not extend to actions against the LLC by the Tribe acting as Owner, or, in the case of a subsidiary LLC created pursuant to this Part, by the parent LLC acting as Owner, pursuant to Section 991.
3. The LLC must follow the method mandated by Section 922. [TCR 10-42]

ARTICLE 9
LIMITED LIABILITY COMPANIES WHOLLY-OWNED BY THE TRIBE

SUBPART 2
SPECIAL FORMATION REQUIREMENTS FOR TRIBALLY-OWNED LLC'S

11B-921 Formation.

11B-922 Additional Requirements for the Articles of Organization.

11B-921 Formation.

1. Tribally-owned LLC's. The Chairperson of the Tribal Council shall be the organizer of any Tribally-owned limited liability company.
2. Subsidiaries of Tribally-owned LLC's. A Board Member of the parent Tribally-owned LLC or parent Tribal Corporation shall be the organizer of any Tribally-owned subsidiary LLC. If practicable, such Board Member shall also be a member of the Tribe.
3. Unless a delayed effective date is specified:
   a. The existence of a Tribally-owned LLC begins when the Articles of Organization have been approved by resolution of the Tribal Council in accordance with Section 911 and have been filed with the Office of the Secretary in accordance with Section 111.
   b. The existence of a subsidiary LLC owned by a Tribally-owned LLC or Tribal Corporation begins when the Articles of Organization have been approved by a resolution of the Directors of the parent Tribally-owned LLC or Tribal Corporation and have been filed with the Office of the Secretary in accordance with Section 111.
   c. The Articles of Organization of any Tribally-owned LLC or subsidiary thereof, and any amendments thereto, shall be filed with the Office of the Secretary in accordance with Section 111, and shall state at a minimum the items set forth in Section 922 below. [TCR 10-42]

11B-922 Additional Requirements for the Articles of Organization. As set forth in Section 917, Tribally-owned limited liability companies established under Sections 911 and 912 may grant a limited waiver of sovereign immunity in order to promote economic development through commercial transactions for which such a waiver is necessary and beneficial to the Tribe. The method for granting a limited waiver of sovereign immunity through the above mentioned entities is as follows:

1. The sovereign immunity of a Tribally-owned LLC may be waived only by:
   a. A resolution adopted by the Board of Directors of the Tribally-owned LLC for the specific purpose of granting a waiver, or in the case of Owner-managed Tribally- owned subsidiary LLC, by the Owner's Board of Directors;
   b. The language of the waiver must be explicit; and
   c. The waiver must be contained in a written contract or commercial document to which the LLC is a party.
2. Waivers of sovereign immunity by resolution of the Board of Directors may be granted only when necessary to secure a substantial advantage or benefit to the Tribally-owned LLC. Waivers of sovereign immunity by resolution may not be general but must be specific and limited as to duration, grantee, transaction, property or funds of the Tribally-owned LLC subject to the waiver, the Court having jurisdiction and applicable law. [TCR 10-42]

ARTICLE 9
LIMITED LIABILITY COMPANIES WHOLLY-OWNED BY THE TRIBE

SUBPART 3
MANAGEMENT OF TRIBALLY-OWNED LLC'S

11B-931 Management.

11B-931 Management.

1. All Tribally-owned LLC's formed pursuant to Section 911 of this Code shall be managed by a Board of Directors in the manner described in the Company's Operating Agreement. The qualifications, number, terms and method for selecting and removing Directors of any Tribally-owned LLC shall be specified in the LLC's Operating Agreement.
2. All Tribally-owned subsidiary LLC's formed pursuant to Section 912 of this Code may be Owner-managed or managed by a Board of Directors. If managed by a Board of Directors, the Company's Operating Agreement shall set forth the qualifications, number, terms and method for selecting and removing the Directors. If Owner-managed, the LLC shall have one or more persons exercising the functions of Chief Executive Officer. [TCR 10-42]

ARTICLE 9
LIMITED LIABILITY COMPANIES WHOLLY-OWNED BY THE TRIBE

SUBPART 4
DECISIONS AND VOTING FOR TRIBALLY-OWNED LLC'S

11B-941 Voting.

11B-941 Voting.

1. The Ownership interests in all Tribally-owned LLC's shall be voted in the accordance with the Tribal Council's procedures for voting and passing Tribal resolutions.
2. The Ownership interests in a Tribally-owned subsidiary LLC shall be voted as provided in the Company's Operating Agreement. [TCR 10-42]

ARTICLE 9
LIMITED LIABILITY COMPANIES WHOLLY-OWNED BY THE TRIBE

SUBPART 5
DISTRIBUTIONS FOR TRIBALLY-OWNED LLC'S

11B-951 Distributions of Income.

11B-951 Distributions of Income.

1. Subject to the Tribe's ultimate ownership right to all income generated by its Tribally-owned LLCs, a Tribally-owned LLC shall distribute the net income of the LLC to the Tribe as set forth in a dividend plan adopted in accordance with the Operating Agreement and duly approved by the Tribal Council, except that a Tribally-owned LLC may retain reserves necessary to carry on the LLC's business in a reasonably prudent manner and as recommended by the Board of Directors, subject to further limitations set forth in Section 507 and in the Operating Agreement.
2. Subject to the parent Tribally-owned LLC's or parent Tribal Corporation's ultimate ownership right to all income generated by its subsidiary LLCs, a subsidiary LLC created pursuant to Section 912 shall distribute the net income of the LLC to the parent Tribally-owned LLC or parent Tribal Corporation as set forth in a dividend plan adopted in accordance with the Operating Agreement and duly approved by its Board of Directors, except that a Tribally-owned LLC may retain reserves necessary to carry on the LLC's business in a reasonably prudent manner and as recommended by the Board of Directors, subject to further limitations set forth in Section 507 and in the Operating Agreement. [TCR 10-42]

ARTICLE 9
LIMITED LIABILITY COMPANIES WHOLLY-OWNED BY THE TRIBE

SUBPART 6
ADDITIONAL REPORTS AND AUDITS

11B-961 Audit.

11B-962 Financial, Business, and Planning Information.

11B-961 Audit. In addition to any Owner inspection rights provided in the Operating Agreement of a Tribally-owned LLC, the Tribal Council may at any time, by process in the manner required to be provided in the Operating Agreement, require that any LLC wholly-owned by the Tribe, whether directly or indirectly, or an LLC in which the Tribe owns the majority interest, be audited by an independent auditor hired by the Tribe who shall have the absolute right to require access to all of the LLC's records and documents necessary for such an audit. [TCR 10-42]

11B-962 Financial, Business, and Planning Information. In addition to any reports to the Owner required by the Operating Agreement, the Board of Directors of each Tribally-owned LLC, whether owned directly or indirectly, shall submit the following information to the Tribal Council:

1. Copies of any periodic financial statements (including monthly or quarterly balance sheets, profit and loss statements, and cash flow statements) as may be prepared in the ordinary course of business, promptly after such statements are furnished to the LLC's Board of Directors;
2. A full report of the business activities of the company within 120 days after the close of each fiscal year; and
3. A proposed annual plan for the following year, including any proposed funding from the Tribe or anticipated distributions to the Tribe. [TCR 10-42]

ARTICLE 9
LIMITED LIABILITY COMPANIES WHOLLY-OWNED BY THE TRIBE

SUBPART 7
ACTIONS AGAINST TRIBALLY-OWNED LLC'S

11B-971 Court Actions By a Tribe Authorized. 11B-973 Relief Available.
11B-972 Tribal Approval Required.

11B-971 Court Actions By a Tribe Authorized. The Tribe, as Owner of any Tribally-owned limited liability company organized pursuant to this Code, or in the case of a subsidiary LLC created pursuant to this Section, the parent Tribally-owned LLC or Tribal Corporation acting as Owner, may bring a civil action against the LLC, its Board of Directors or its officers in the Tribal Court only pursuant to this Part to:

1. Enjoin temporarily or permanently any action of the LLC that is an ultra vires act outside the authority of the LLC and that is either:
   a. unlawful; or
   b. has or could cause material harm to the assets of the LLC or the Tribe if no immediate action is taken.
   c. require the distribution of the LLC's surplus net income, to the extent permitted by Section 507.
2. In accordance with Section 913, the sovereign immunity of the LLC shall not extend to actions against the LLC by a Tribe acting as Owner, or, in the case of a subsidiary LLC created pursuant to this Part, by the parent LLC acting as Owner.
3. Nothing contained herein shall be construed as authorizing actions of any kind whatsoever against a Tribe. [TCR 10-42]

11B-972 Tribal Approval Required. The filing of any court action against a Tribally-owned LLC pursuant to this Section must be authorized by the Tribe as Owner in the same manner as required in Section 941 for voting on any item properly coming before the Tribe as Owner. The request for consideration of the proposed court action may be made by the Chairperson of the Tribal Council. [TCR 10-42]

11B-973 Relief Available. In any action brought under this Section, the Tribal Court may, based on clear and convincing evidence set forth in its findings of fact and conclusions of law:

1. Issue a temporary restraining order, preliminary injunction, and permanent injunctive relief pursuant to the procedures and standards applicable in the Tribal Court, except that no bond need be posted for any preliminary injunctive relief; or
2. Order that funds of the LLC be distributed to a Tribe to the extent permitted by the Operating Agreement and Section 507 of this Code. [TCR 10-42]

TITLE 12
FAMILY RELATIONS

SUMMARY OF CONTENTS

SECTION	ARTICLE-PAGE
1. TABLE OF REVISIONS	ii
2. TABLE OF CONTENTS	iii
3. ARTICLE 1: [RESERVED]	1-1
4. ARTICLE 2: DOMESTIC AND FAMILY VIOLENCE ACT	2-1
5. ARTICLE 3: WINNEBAGO CHILD SUPPORT ENFORCEMENT IV-D PROGRAM ACT; ESTABLISHMENT AND DUTIES	3-1
6. ARTICLE 4: WINNEBAGO PARENTAGE ACT	4-1
7. ARTICLE 5: WINNEBAGO CHILD SUPPORT ACT	5-1
• PRELIMINARY PROVISIONS	5-3
• ESTABLISHMENT & MODIFICATION OF CHILD SUPPORT	5-7
• TRIBAL TANF & ASSIGNMENT OF CHILD SUPPORT PAYMENTS TO THE WTN-CSEP	5-11
• LOCATION OF A MISSING OBLIGOR, ASSETS, AND OBLIGEE BY THE WTN-CSEP	5-13
• PAYMENTS, COLLECTION, DISTRIBUTION, AND ARREARS	5-13
• CIVIL REMEDIES FOR ENFORCEMENT OF CHILD SUPPORT ORDERS	5-16
• INTERGOVERNMENTAL CHILD SUPPORT CASES – AFFORDING FULL FAITH AND CREDIT	5-24
• REGISTRATION OF FOREIGN CHILD SUPPORT ORDER FOR ENFORCEMENT	5-24
• REGISTRATION OF FOREIGN CHILD SUPPORT ORDERS FOR MODIFICATION	5-26

TITLE 12
TABLE OF REVISIONS

The following table is included in this title as a guide for determining whether each article properly reflects the current version. This table will be updated with the revision of each article.

Through usage and supplementation, pages in bound titles can be inserted and removed when sections are revised on an article-by-article basis. This table should be placed before the Table of Contents in the title.

The "Article" column lists each article, and the "Section" column lists any corresponding sections that have been revised, in sequence. The "Revised Date" column reflects the effective date of the revision (e.g., "6/20/15"). If an article is not listed in the table, it has not been revised since the December 2015 Winnebago Tribal Code update and distribution.

Article	**Section**	**Revised Date**

TITLE 12
FAMILY RELATIONS

ARTICLE 1

[Reserved]

TITLE 12
ARTICLE 2
DOMESTIC AND FAMILY VIOLENCE ACT
(As amended and approved December 7, 2005)

12-201 Purpose and Findings.
12-202 Definitions.
12-203 Domestic or Family Violence; Crime Involving Domestic or Family Violence; Penalties; Mandatory Intervention.
12-204 Possession of a Firearm.
12-205 Duties of Law Enforcement to Victim; Required Notice.
12-206 Determination of predominant aggressor; required report.
12-207 Authority of Law Enforcement to Seize Weapons.
12-208 Conditions of Release.
12-209 Mandatory Arrest for Violation of Conditions of Release.
12-210 Written procedures for Prosecution.
12-211 Duty of Prosecutor to Notify Victim.
12-212 Record of Dismissal.
12-213 Dismissal Prohibited Due to Civil Compromise.
12-214 Rights of Victims; Duty of Prosecutor to Inform.
12-215 Spousal Privileges Inapplicable.
12-216 Advocate-Victim Privilege.
12-217 Residential Confinement; Visitation in Home of Victim Prohibited.
12-218 Diversion prohibited.
12-219 Required Policies and Procedures.
12-220 Eligible Petitioners for Protection Orders.
12-221 Uniform Documents for Petitions and Orders; Required Statements; Duties of Clerk.
12-222 Jurisdiction; venue; residency not required to petition.
12-223 Continuing Duty to Inform Court of Other Proceedings; Effect of Other Proceedings; Delay of Relief Prohibited; Omission of Petitioner's Address.
12-224 Emergency Order for Protection; Available Relief; Availability of Judge or Court Officer.
12-225 Order for Protection; Modification of Orders; Relief Available Ex Parte; Relief Available After Hearing; Duties of the Court; Duration of Order.
12-226 Required Hearings; Duty When Order for Protection Denied.
12-227 Effect of Action by Petitioner or Respondent on Order.
12-228 Denial of Relief Prohibited.
12-229 Mutual Orders for Protection.
12-230 Mandatory Arrest for Certain Violations of Orders for Protection.
12-231 Violation of Certain Orders for Protection.
12-232 Court-ordered and Court-referred Mediation Prohibited.
12-233 Court Costs and Fees.
12-234 Court-referred Assistance to Victims of Domestic and Family Violence.
12-235 Registration and Enforcement of Foreign Orders for Protection; Duties of Court Clerk.
12-236 Mandatory Training.

TITLE 12
ARTICLE 3
WINNEBAGO CHILD SUPPORT ENFORCEMENT IV-D PROGRAM ACT; ESTABLISHMENT AND DUTIES

12-301 Act, How Cited.
12-302 Purpose.
12-303 Definitions.
12-304 Authority and Responsibility of the WTN-CSE.
12-305 Program Participation and Funding.

TITLE 12
ARTICLE 4
WINNEBAGO PARENTAGE ACT

12-401 Act, How Cited.
12-402 Purpose of Act.
12-403 Definitions.
12-404 Subject Matter Jurisdiction.
12-405 Personal Jurisdiction.
12-406 Protection of Participants.
12-407 Authorized Release of Case Records and Other Information.
12-408 Publication of Proceedings.
12-409 Penalty for Unauthorized Disclosure.
12-410 Notice.
12-411 Establishment of Parent-Child Relationship.
12-412 No Discrimination Based on Marital Status.
12-413 Consequences of Establishment of Parentage.
12-414 Presumption of Paternity.
12-415 Tribal Acknowledgement and Denial of Paternity – Duties of the WTN-CSEP.
12-416 Tribal Acknowledgment of Paternity – Execution.
12-417 Tribal Denial of Paternity by a Presumed Father.
12-418 Rules for Tribal Acknowledgment and Denial of Paternity.
12-419 Effect of Tribal Acknowledgment or Denial of Paternity.
12-420 No Filing Fee.
12-421 Proceeding for Rescission.
12-422 Challenge After Expiration of Period for Rescission.
12-423 Procedure for Rescission or Challenge.
12-424 Full Faith and Credit.
12-425 Release of Information – Tribal Acknowledgment or Denial of Paternity.
12-426 Scope of Genetic Testing.
12-427 Order for Genetic Testing.
12-428 Requirements for Genetic Testing.
12-429 Report of Genetic Testing.
12-430 Genetic Testing Results – Rebuttal.
12-431 Costs of Genetic Testing.
12-432 Additional Genetic Testing.
12-433 Genetic Testing When Specimens Not Available.
12-434 Deceased Individual.
12-435 Identical Brothers.
12-436 Confidentiality of Genetic Testing.
12-437 Proceeding to Adjudicate the Parentage of a Child – Authorization.
12-438 Standing to Maintain Proceeding.
12-439 Parties to Proceeding.
12-440 No Limitation – Child Having No Presumed, Acknowledged, or Adjudicated Father.
12-441 Limitation – Child Having Presumed Father.
12-442 Authority to Deny Motion for Genetic Testing.
12-443 Limitation – Child Having Acknowledged or Adjudicated Father.
12-444 Joinder of Proceedings.
12-445 Proceeding Before Birth.
12-446 Child as Party – Representation.
12-447 Admissibility of Results of Genetic Testing – Expenses.
12-448 Consequences of Declining Genetic Testing.
12-449 Admission of Paternity Authorized.
12-450 Temporary Order.
12-451 Rules of Adjudication of Paternity.
12-452 Jury Prohibited.
12-453 Closed Hearings.
12-454 Order on Default.
12-455 Dismissal for Want of Prosecution.
12-456 Order Adjudicating Parentage.
12-457 Binding Effect of Determination of Parentage.
12-458 Liability for Collection of Support.
12-459 Application of the Winnebago Parentage Act.

TITLE 12
FAMILY RELATIONS
ARTICLE 5
WINNEBAGO CHILD SUPPORT ACT
(As revised May 21, 2014)

PRELIMINARY PROVISIONS

12-501 Act, How Cited.
12-502 Findings.
12-503 Purpose.
12-504 Definitions.
12-505 Jurisdiction.
12-506 Protection of Participants — Confidentiality of Case Records.
12-507 Authorized Release of Case Records and Other Information.
12-508 Penalty for Unauthorized Disclosure.
12-509 Attorney Represents Tribe's Interest in the Enforcement of Child Support Obligations.
12-510 Notice.

ESTABLISHMENT & MODIFICATION OF CHILD SUPPORT

12-511 Duty to Support Children.
12-512 Liability of Stepparent For Support.
12-513 Termination of Parental Rights – Duty of Support.
12-514 Support For Children After Majority – Retroactive Application.
12-515 Support by Tribe – Liability of Parent's Estate.
12-516 Allowance to Parent for Support of Child.
12-517 Duration of Child Support Obligations.
12-518 Periodic Review of Child Support Orders.
12-519 Notice of Periodic Review of Child Support Orders.
12-520 Obligor's Duties Upon Review – Failure to Provide Information.
12-521 Notice of Review Determination.
12-522 Motion for Amendment of Child Support Order – How Made – Presumption When Obligor's Income Unknown.
12-523 Request For Review – Notice of Right to Request Review.

TRIBAL TANF & ASSIGNMENT OF CHILD SUPPORT PAYMENTS TO THE WTN-CSEP

12-524 Recipients of Tribal TANF - Assignment of Support Payments.
12-525 Families-First Distribution of Child Support Arrearages.
12-526 Existing Assignments.
12-527 Effect of Assignment.
12-528 Cooperation with Winnebago Tribe of Nebraska Child Support Enforcement Program (WTN-CSEP).
12-529 Non-Cooperation with the WTN-CSEP.
12-530 Assignment of Rights; Judgment.

LOCATION OF A MISSING OBLIGOR, ASSETS, AND OBLIGEE BY THE WTN-CSEP

12-531 Location Activities of the WTN-CSEP.

PAYMENTS, COLLECTIONS, DISTRIBUTION, AND ARREARS

12-532 Mandatory Payment of Child Support Obligations to the WTN-CSEP.
12-533 Collections and Distribution – General Rule, Current Receipt of Tribal TANF, Former Receipt of Tribal TANF.
12-534 Overpayments.
12-535 Arrears.
12-536 Child Support Order – Required Interest Statement on Arrears.
12-537 Interest Waived on Arrearages.
12-538 Offsets of Child Support.
12-539 Agreements to Waive Child Support.

CIVIL REMEDIES FOR ENFORCEMENT OF CHILD SUPPORT ORDERS

12-540 Income Withholding Order.
12-541 Immediate Income Withholding.
12-542 Subsequent Income Withholding Order – Provision of Notice of Impact of Income Withholding Law to Obligors.
12-543 Requests by Obligee for Income Withholding – Approval – Procedures and Standards.
12-544 Procedure – Notice to Obligor.
12-545 Hearing Upon Obligor's Request.
12-546 Mandatory Federal Income Withholding Form – Effect of Income Withholding Order.
12-547 Voluntary Income Withholding for Child Support – Limitations.
12-548 Service of Income Withholding Order on Income Payer.
12-549 Income Withholding - Duties and Liabilities of Income Payer under Income Withholding Order.
12-550 Requests for Information from Income Payer.
12-551 Amendment – Termination of Income Withholding Order.
12-552 Interstate Income Withholding – Initiation by the Winnebago Tribe of Nebraska to Another Jurisdiction.
12-553 Child Support Exempt from Process.
12-554 Administrative Seek Employment Orders.
12-555 Driver's License and Occupational License Suspension, Motor Vehicle Lien.
12-556 Contempt Proceedings for Nonpayment of Child Support.

INTERGOVERNMENTAL CHILD SUPPORT CASES – AFFORDING FULL FAITH AND CREDIT

12-557 Full Faith and Credit of Foreign Child Support Orders.

REGISTRATION OF FOREIGN CHILD SUPPORT ORDER FOR ENFORCEMENT

12-558 Registration of Foreign Child Support Order for Enforcement.
12-559 Effect of Registration for Enforcement.
12-560 Choice of Law.
12-561 Notice of Registration of Order.
12-562 Procedure to Contest Validity or Enforcement of Registered Order.
12-563 Burden on Party Contesting the Registration or Enforcement.

REGISTRATION OF FOREIGN CHILD SUPPORT ORDERS FOR MODIFICATION

12-564 Registration Child Support Order for Modification.
12-565 Modification of Child Support Order of Another Tribe or State.
12-566 Application of the Winnebago Child Support Act.
12-567 Transferring of a Foreign Child Support or Custody Case.
12-568 Effect of Accepting a Transferred Case.
12-569 Notice of Acceptance of Transferred Case.
12-570 Procedure to Contest the Acceptance of a Transferred Case.
12-571 Burden on Party Contesting the Transfer of a Case.

TITLE 12
ARTICLE 1

[Reserved]

TITLE 12
ARTICLE 2
DOMESTIC AND FAMILY VIOLENCE ACT
(As amended and approved December 7, 2005)

12-201 Purpose and Findings.
12-202 Definitions.
12-203 Domestic or Family Violence; Crime Involving Domestic or Family Violence; Penalties; Mandatory Intervention.
12-204 Possession of a Firearm.
12-205 Duties of Law Enforcement to Victim; Required Notice.
12-206 Determination of predominant aggressor; required report.
12-207 Authority of Law Enforcement to Seize Weapons.
12-208 Conditions of Release.
12-209 Mandatory Arrest for Violation of Conditions of Release.
12-210 Written procedures for Prosecution.
12-211 Duty of Prosecutor to Notify Victim.
12-212 Record of Dismissal.
12-213 Dismissal Prohibited Due to Civil Compromise.
12-214 Rights of Victims; Duty of Prosecutor to Inform.
12-215 Spousal Privileges Inapplicable.
12-216 Advocate-Victim Privilege.
12-217 Residential Confinement; Visitation in Home of Victim Prohibited.
12-218 Diversion prohibited.
12-219 Required Policies and Procedures.
12-220 Eligible Petitioners for Protection Orders.
12-221 Uniform Documents for Petitions and Orders; Required Statements; Duties of Clerk.
12-222 Jurisdiction; venue; residency not required to petition.
12-223 Continuing Duty to Inform Court of Other Proceedings; Effect of Other Proceedings; Delay of Relief Prohibited; Omission of Petitioner's Address.
12-224 Emergency Order for Protection; Available Relief; Availability of Judge or Court Officer.
12-225 Order for Protection; Modification of Orders; Relief Available Ex Parte; Relief Available After Hearing; Duties of the Court; Duration of Order.
12-226 Required Hearings; Duty When Order for Protection Denied.
12-227 Effect of Action by Petitioner or Respondent on Order.
12-228 Denial of Relief Prohibited.
12-229 Mutual Orders for Protection.
12-230 Mandatory Arrest for Certain Violations of Orders for Protection.
12-231 Violation of Certain Orders for Protection.
12-232 Court-ordered and Court-referred Mediation Prohibited.
12-233 Court Costs and Fees.
12-234 Court-referred Assistance to Victims of Domestic and Family Violence.
12-235 Registration and Enforcement of Foreign Orders for Protection; Duties of Court Clerk.
12-236 Mandatory Training.

12-201 Purpose and Findings. Domestic and Family Violence is conduct that is contrary to the values of the Winnebago Tribe. It is devastating to victims and to any family in which it happens. Domestic and Family Violence harms the entire community, because it endangers the physical, mental, emotional and spiritual health of everyone involved. The Tribe will not tolerate domestic violence among its people or in the lands that it governs. The Winnebago Tribal Domestic and Family Violence Code must be construed to promote:

1. The protection and safety of all victims of domestic or family violence in a fair, prompt and effective manner, and
2. The prevention of future violence in all families. [TCR 96-55, 06-26]

12-202 Definitions. Unless the context otherwise requires, as used in the Winnebago Tribal Code:

1. "Domestic or family violence" means the occurrence of one or more of the following acts by a family or household member, but does not include acts of self defense:
   a. Attempting to cause or causing physical harm to another family or household member;
   b. Placing a family or household member in fear of physical harm;
   c. Causing a family or household member to engage involuntarily in sexual activity by force or duress;
   d. Intentionally engaging in a course of conduct directed at a specific person that would cause a reasonable person under the same circumstances to fear bodily injury to or the death of himself or herself or a member of his or her family or household.
2. "Family or Household Members" include:
   a. Adults or minors who are current or former spouses;
   b. Adults or minors who live together or who have lived together;
   c. Adults or minors who are dating or who have dated;
   d. Adults or minors who are engaged in or who have engaged in a sexual relationship;
   e. Adults or minors who are related by blood or adoption;
   f. Adults or minors who are related or formerly related by marriage;
   g. Persons who have a child in common;
   h. a person similarly situated to a spouse, parent or guardian of the victim; and
   i. Minor children of a person in a relationship that is described in paragraphs (a) through (g).
3. "Crime Involving Domestic Violence" occurs when a Family or Household Member commits an offense against another Family or Household Member that is a crime under federal, state or tribal law, including:
   a. Arson
   b. Assault offenses (aggravated assault, simple assault, and intimidation);
   c. Burglary, breaking and entering;
   d. Destruction, damage or vandalism of property;
   e. Homicide offenses (murder and non-negligent manslaughter, negligent manslaughter and justifiable homicide);
   f. Kidnapping, abduction;
   g. Sex offenses, forcible (forcible rape, forcible sodomy, sexual assault with an object and forcible fondling);
   h. Stolen property offenses;
   i. Weapons law violations;
   j. Disorderly conduct;
   k. Family offenses, non-violent;
   l. Stalking;
   m. Violations of Protection orders or Restraining Orders previously filed;
   n. Harassment;
   o. Criminal Trespass; or
   p. Other crime that has an element involving the use, attempted use, or threatened use of physical force, or the use, attempted use or threatened use of a weapon;

4. "Program of Intervention for Perpetrators" means a specialized program that:
   a. Accepts perpetrators of domestic or family violence into treatment or educational classes to satisfy court orders;
   b. Offers treatment or re-education to perpetrators of domestic or family violence; or
   c. Offers classes or instruction to perpetrators of domestic or family violence.

5. "Program for Victims of Domestic or Family Violence" means a specialized program for victims of domestic or family violence and their children that provides advocacy, shelter referral, crisis intervention, supportive services, referral to alcohol treatment, mental health services, counseling, re-education, training or transportation.
6. "Safety Plan" means a written or oral outline of actions to be taken by a victim of domestic or family violence to secure protection and support after making an assessment of the lethality involved. [TCR 96-55, 06-26]

12-203 Domestic or Family Violence; Crime Involving Domestic or Family Violence; Penalties; Mandatory Intervention.

1. It shall be unlawful for a person to commit Domestic or Family Violence or to commit a Crime involving Domestic or Family Violence as defined in Section 12-202.
2. Domestic or Family Violence shall be a Class III offense.
3. The penalty for a Crime involving Domestic or Family Violence shall correspond to the penalty for that offense in the Code of the Winnebago Tribe and the defendant shall be assessed twice the regular court costs and fees.
4. The penalty for any second offense within five years of the first offense shall be enhanced by one degree above the penalty otherwise provided, unless such criminal offense is already punishable as a Class I offense.
5. An offender shall be required as a part of any sentence or probation to attend a mandatory Program of Intervention for Perpetrators. Participation in this program shall not be suspended or omitted from any sentence or condition of probation.
6. If substance abuse is involved, the offender shall be court ordered to complete a drug test and substance abuse assessment by a licensed alcohol and drug counselor and complete any recommended treatment plan.
7. The court costs and fees collected in any Domestic Violence proceeding shall be distributed to the Winnebago Domestic Violence Intervention and Family Preservation Program for use in victim and batterer support or education programs and to assist in providing mandatory Domestic Violence training for all court personnel, judges, court clerks, dispatchers, prosecutors, law enforcement, advocates, and medical personnel. [TCR 96-55, 06-26]

12-204 Possession of a Firearm.

1. It shall be unlawful for any person convicted of a crime of Domestic or Family Violence to ship, transport, possess, receive, sell or otherwise disposes of a firearm or ammunition.
2. Violation of this provision shall be a Class III offense. [TCR 96-55, 06-26]

12-205 Duties of Law Enforcement to Victim; Required Notice.

1. A law enforcement officer responding to a call of Domestic or Family Violence shall use all reasonable means to protect the victim and prevent further violence, including but not limited to:
   a. Taking any action necessary to provide for the safety of the victim and any family or household member;
   b. Confiscating any weapon involved in the alleged Domestic or Family Violence;
   c. Notifying the on-call Domestic Violence Victim Advocate for transporting the victim and any child to a shelter and/or providing other support services;
   d. Assisting the victim in removing any essential personal effects;
   e. Assisting the victim and any child in obtaining medical treatment, including obtaining transportation to a medical facility;

f. Giving victims immediate and adequate notice of the rights of victims and of the remedies and services available to victims of Domestic or Family Violence.

2. As part of the notice required by paragraph (f) of subsection 1, the law enforcement officer shall give a written notice to the victim substantially as follows:

"Victims of Domestic or Family Violence have the right to physical safety under the protection of the law. You have the right to request the following:

a. That the officer assist in providing for your safety.
b. An emergency order for protection.
c. Assistance in obtaining your essential personal effects.
d. Assistance from the Winnebago Domestic Violence Victim Advocate.
e. Assistance in locating and transporting you to a safe environment such as a shelter, a family member's or a friend's residence, or a similar place of safety.
f. Medical emergency transportation and treatment.
g. A copy of the police report at no cost.
h. Sign a Release of Information for confidentiality protection.
i. File a Petition for Protection Order and request the prosecuting attorney to file a criminal complaint which may include any of the following orders:
    i. An order enjoining your abuser from threatening to commit or committing further acts of Domestic or Family Violence;
    ii. An order prohibiting your abuser from harassing, annoying, telephoning, contacting or otherwise communicating with you, directly or indirectly;
    iii. An order removing your abuser from your residence;
    iv. An order directing your abuser to stay away from your residence, school, place of employment, or any other specified place frequented by you and another family or household member;
    v. An order prohibiting your abuser from using or possessing any firearm or other weapon specified by the court;
    vi. An order granting you possession and use of the automobile and other essential personal effects;
    vii. An order granting you custody of your child or children;
    viii. An order denying your abuser visitation;
    ix. An order specifying arrangements for visitation, including requiring supervised visitation; and
    x. An order requiring your abuser to pay certain costs and fees, such as rent or mortgage payments, child support payments, medical expenses, expenses for shelter, court costs, and attorney's fees.

The forms needed to obtain an order for protection are available from the Clerk of the Tribal Court. The resources available in this community for information relating to Domestic and Family Violence are: [list current resources]. You also have the right to seek reimbursement for losses suffered as a result of the abuse, including medical and moving expenses, loss of earnings or support, and other expenses for injuries sustained and damage to your property. This can be done without an attorney in small claims court if the total amount claimed is less than Two thousand ($2,000.00) dollars."

3. The written notice must not include the addresses of shelters. [TCR 96-55, 06-26]

12-206 Determination of predominant aggressor; required report.

1. If a law enforcement officer receives complaints of Domestic or Family Violence from two or more opposing persons, the officer shall evaluate each complaint separately to determine who is

the predominant aggressor. If the officer determines that one person is the predominant aggressor, the officer need not arrest the other person believed to have committed Domestic or Family Violence. In determining whether a person is the predominant aggressor the officer shall consider:

a. Whether one of the persons acted in self-defense, or
b. History of abuse including but not limited to the following factors:
   i. Prior complaints of Domestic or Family Violence located at the Police Department and/or Domestic Violence Victim Office;
   ii. The relative severity of the injuries inflicted on each person; and
   iii. The likelihood of future injury to each person.

2. A law enforcement officer shall not:
   a. Threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage requests for intervention by law enforcement by any party; or
   b. Base the decision to arrest or not to arrest on:
      i. The specific consent or request of the victim; or
      ii. The officer's perception of the willingness of a victim of or witness to the Domestic or Family Violence to testify or otherwise participate in a judicial proceeding.
3. In addition to any other report required, a law enforcement officer who does not make an arrest after investigating a complaint of Domestic or Family Violence or who arrests two or more persons for a crime involving domestic or family violence must submit a written report setting forth the grounds for not arresting or for arresting both parties.
4. A copy of each police report involving Domestic or Family Violence shall be forwarded to the Domestic Violence Program whether or not the case is prosecuted, including witness statements, "excited utterances" of victims or witnesses, pictures of the victim, conditions of the scene, and a list of possible objects used as weapons. [TCR 96-55, 06-26]

12-207 Authority of Law Enforcement to Seize Weapons. Incident to an arrest for a crime involving domestic or family violence, a law enforcement officer:

1. Shall seize all weapons that are alleged to have been involved or threatened to be used in the commission of a crime.
2. May seize a weapon that is in the plain view of the officer or was discovered pursuant to a consensual search, as necessary for the protection of the officer or other persons. [TCR 96-55, 06-26]

12-208 Conditions of Release.

1. In making a decision concerning pretrial release of a person who is arrested for or charged with Domestic or Family Violence, a Crime involving Domestic or Family Violence, including a Violation of an Order for Protection, the Tribal Court shall review the defendant's previous records of convictions for Domestic Violence and Firearms and the facts of the arrest and detention of the person to determine whether the person:
   a. Is a threat to the alleged victim or other family or household member;
   b. Is a threat to Public safety; and
   c. Is reasonably likely to appear in court.
2. Before releasing a person arrested for or charged, the Tribal Court shall make findings on the record if possible concerning the determination made in accordance with subsection (1) and may impose conditions of release or bail on the person to protect the alleged victim of Domestic or Family Violence and to ensure the appearance of the person at a subsequent court proceeding. The conditions may include:

a. An order enjoining the person from threatening to commit or committing acts of Domestic or Family Violence against the alleged victim or other family or household member or against Domestic Violence Program employees.
b. An order prohibiting the person from harassing, annoying, telephoning, stalking, contacting, or otherwise communicating with the alleged victim, either directly or indirectly.
c. An order directing the person to vacate or stay away from the home of the alleged victim and to stay away from any other location where the victim is likely to be.
d. An order prohibiting the person from using or possessing a firearm or other weapon specified by the court especially if there has been a prior conviction of Domestic Violence or firearm regulations.
e. An order prohibiting the person from possession or consumption of alcohol or controlled substances.
f. Any other order required to protect the safety of the alleged victim and to ensure the appearance of the person in court.

3. If conditions of release are imposed, the Tribal Court shall:
   a. Issue a written order for conditional release;
   b. Immediately distribute a copy of the order to the Winnebago Police Department; and the Domestic Violence Program; and,
   c. Provide the Police Department with any available information concerning the location of the victim in a manner that protects the safety of the victim.
4. The Tribal court shall provide a copy of the conditions to the arrested or charged person upon his or her release. Failure to provide the person with a copy of the conditions of release does not invalidate the conditions if the arrested or charged person has notice of the conditions.
5. The conditions of release are imposed without a hearing, the arrested or charged person may request a hearing before the court to review the conditions. Upon such a request, the court shall hold a hearing within seventy (72) hours.
6. When a person who is arrested for or charged with Domestic or Family Violence, or a Crime involving Domestic or Family Violence, is released from custody, the Tribal Court shall:
   a. Use all reasonable means to immediately notify the alleged victim of the crime of the release; and
   b. Furnish the alleged victim of the crime a certified copy of any conditions of release at no cost.
7. Release of a person who is arrested for or charged with a Domestic or Family Violence or a Crime Involving Domestic or Family Violence must not be delayed because of the requirements of subsection (6). [TCR 96-55, 06-26]

12-209 Mandatory Arrest for Violation of Conditions of Release. If a law enforcement officer has probable cause to believe that a person has violated a condition of release imposed in accordance with section 12-208 and verifies that the alleged violator has notice of the conditions, the officer shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer. [TCR 96-55, 06-26]

12-210 Written procedures for Prosecution. The Tribal Court Prosecutor shall develop and put into effect written procedures for prosecution of Domestic and Family Violence to ensure the effective prosecution of such crimes and the protection and safety of victims of Domestic and Family Violence. The procedures shall include such provisions as:

1. The employment, economic educational, physical and/or mental health and political status of the alleged perpetrator and victim shall not enter into determinations for Domestic Violence crimes.
2. A “no drop” policy which prohibits victims from withdrawing charges.

3. The prohibition of diversion, deferred sentencing, and other agreements not to prosecute.
4. The use or abuse of alcohol by the alleged perpetrator or victim shall not be a primary factor in determining the pursuit of domestic violence cases but shall be considered as it relates to the safety of the victim and potential lethality.
5. A process describing the utilization of Domestic Violence Victim Advocates during every phase of criminal proceedings including treatment, education and prevention for the safety of the family and children.
6. No member of the prosecution office has the authority to order the release of an alleged perpetrator prior to the procedures described in Section 12-210.
7. Prosecution will not dismiss or reduce the charge of a domestic violence case without prior consultation and review with the arresting officer and Domestic Violence Victim Advocate.
8. Prosecution shall expedite proceedings with a minimum of continuances and shall consider the present residency of the victim as it relates to continuances, especially if the victim has relocated off-reservation for safety.
9. The victim shall not be required to act as the primary witness. The prosecution shall enlist any and all evidentiary avenues, including but not limited to photographs, other witnesses, excited utterances and other law enforcement testimony, medical records, and history of past abuse, in order to effectively prosecute the case.
10. In recognizing Domestic Violence as a crime and not a relationship issue, the prosecution shall not recommend or promote any actions that require the alleged victim to engage in any type or form of mediation process with the alleged assailant such as mediation, peacemaking, alternative justice, restorative justice, family counseling, couple counseling, circle sentencing, or similar program.
11. Enhanced measures to protect victims when the perpetrator is a repeat offender, including education, treatment, trauma counseling, or mental health assessment pursuant to section 12-205. [TCR 96-55, 06-26]

12-211 Duty of Prosecutor to Notify Victim.

1. A prosecutor shall make reasonable efforts to notify a victim of an alleged crime involving domestic or family violence when the prosecutor has decided to decline prosecution of the crime or to dismiss the criminal charges filed against the defendant.
2. Release of a defendant from custody must not be delayed because of the requirements of subsection (1). [TCR 96-55, 06-26]

12-212 Record of Dismissal. When a court dismisses criminal charges or a prosecutor moves to dismiss charges against a defendant accused Domestic or Family Violence, the specific reasons for the dismissal must be recorded in the court file. The prosecutor shall indicate the specific reason why the case will not be prosecuted. [TCR 96-55, 06-26]

12-213 Dismissal Prohibited Due to Civil Compromise. A court shall not dismiss a Domestic or Family Violence charge for the sole reason that a civil compromise or settlement or reconciliation is reached. [TCR 96-55, 06-26]

12-214 Rights of Victims; Duty of Prosecutor to Inform.

1. An alleged victim of Domestic and Family Violence is entitled to all rights granted to victims of crime including but not limited to:
   a. Be informed of all hearing dates and continuances.

b. Provide the court with a victim-impact statement, victim-opinion statement, and an assessment of the risk of further harm.
c. Be present at sentencing and address the court.
d. Advise the court of conditions of probation and/or parole required to ensure the safety of the victim and other family or household members.
e. Restitution for losses sustained as a direct consequence of any criminal conduct by the alleged perpetrator.
f. Receive notice from the Prosecutor in accordance with Section 12-210.

2. An attorney prosecuting Domestic or Family Violence shall notify the alleged victim of Domestic or Family Violence of the victim's rights set forth herein. [TCR 96-55, 06-26]

12-215 Spousal Privileges Inapplicable. The following evidentiary privileges do not apply in any criminal proceeding in which a spouse or other family or household member is the victim of an alleged crime involving Domestic or Family Violence perpetrated by the other spouse:

1. The privilege of confidential communication between spouses.
2. The testimonial privilege of spouses. [TCR 96-55, 06-26]

12-216 Advocate-Victim Privilege.

1. Except as otherwise provided in subsection (2), a victim of Domestic or Family Violence may refuse to disclose, and may prevent an advocate from disclosing, confidential oral communication between the victim and the advocate and written records and reports concerning the victim if the privilege is claimed by:
   a. The victim; or
   b. The individual who was the advocate at the time of the confidential communication, except that the advocate may not claim the privilege if there is no victim in existence or if the victim has waived the privilege.
2. The privilege does not relieve a person from any duty imposed pursuant to reporting of child abuse or neglect.
3. As used in this subsection, "advocate" means an employee of or volunteer for a program for victim of Domestic or Family Violence who:
   a. Has a primary function of rendering advice, counseling, or assistance to victims of Domestic or Family Violence; supervising the employees or volunteers of the program; or administering the program;
   b. Has undergone twenty (20) hours of related training; and
   c. Works under the direction of a supervisor of the program, supervises employees or volunteers, or administers the program.
4. As used in this subsection, "Victim" means a person who has made an allegation of Domestic or Family Violence against a Family or Household Member or who has been subjected to Domestic or Family Violence perpetrated by a Family or Household Member. [TCR 96-55, 06-26]

12-217 Residential Confinement; Visitation in Home of Victim Prohibited. In cases involving Domestic or Family Violence, a court shall not order residential confinement for a perpetrator in the home of the victim; nor shall a court order visitation of children to take place in the home of the victim. [TCR 96-55, 06-26]

12-218 Diversion prohibited. The court shall not approve any diversionary program in lieu of conviction for a perpetrator of Domestic or Family Violence. [TCR 96-55, 06-26]

12-219 Required Policies and Procedures. The Winnebago Police Department shall develop and put into effect written policies and procedures concerning:

1. The effective response of the agency to cases involving Domestic and Family Violence.
2. Enforcement of this Code and other applicable statutes concerning Domestic and Family Violence.
3. Protection and safety of the victims of Domestic Violence and other family and household members.
4. Coordination with hospitals, other law enforcement agencies and Domestic Violence Intervention programs for victims of Domestic or Family Violence. [TCR 96-55, 06-26]

12-220 Eligible Petitioners for Protection Orders.

1. A person who is or has been a victim of Domestic or Family Violence may file a petition for an order for protection against a family or household member who commits an act of Domestic or Family Violence.
2. A parent, guardian, or other legal representative may file a petition for an order for protection on behalf of a child against a family or household member who commits an act of Domestic or Family Violence.
3. A Domestic Violence Victim Advocate, staff member or volunteer may file for a restraining order on his/her own behalf pursuant to § 2-911 et. seq. [TCR 96-55, 06-26]

12-221 Uniform Documents for Petitions and Orders; Required Statements; Duties of Clerk.

1. The Tribal Court shall:
   a. Develop and adopt a standardized document for petitions and orders for protection, including but not limited to such orders issued pursuant to divorce, custody, and other domestic relations hearings; and
   b. Provide the forms to the clerk of each court authorized to issue such orders.
2. In addition to any other required information, the petition for an order for protection must contain a statement listing each civil or criminal action involving both parties.
3. The following statements must be printed in bold-faced type or in capital letters on the order for protection:
   a. "Violation of this order could result confinement in jail for a period up to twelve (12) months and/or a fine of five hundred ($500) dollars or more.
   b. The respondent is forbidden to enter or stay at the petitioner's residence even if invited to do so by the petitioner or any other person. Such invitation does not void this order for protection."
4. The clerk of the Tribal Court or other designated person shall provide to a person requesting an order for protection:
   a. The forms adopted pursuant to subsection (1);
   b. All other forms required to petition for an order for protection; and
   c. Clerical assistance in filling out the forms and filing the petition.
5. Except as otherwise provided in section 12-226, a petition for an order for protection must be in writing, notarized, and subscribed to in the manner provided by tribal law.
6. All orders for protection must be issued on the form adopted in accordance with subsection (1). [TCR 96-55, 06-26]

12-222 Jurisdiction; venue; residency not required to petition.

1. The Tribal Court has civil jurisdiction to issue orders for protection.

2. A petition for an order for protection may be filed in the tribal court:
   a. Where the petitioner currently or temporarily resides; or
   b. Where the respondent resides; or
   c. Where the violence occurred.
3. There is no minimum requirement of residency to file petitions.
4. Orders of Protection will be entered into the Nebraska database by law enforcement.
5. Full Faith and Credit shall be given to Protection Orders issued by the Winnebago Tribal Court in any state or tribe in accordance with the federal Violence Against Women Act of 2000 and any subsequent amendments. The Winnebago Tribe shall also grant full faith and credit to orders issued by other tribal or state courts. [TCR 96-55, 06-26]

12-223 Continuing Duty to Inform Court of Other Proceedings; Effect of Other Proceedings; Delay of Relief Prohibited; Omission of Petitioner's Address.

1. At any hearing in a proceeding to obtain an order for protection, each party has a continuing duty to inform the court of each proceeding for an order for protection, any civil litigation, each proceeding in family or juvenile court, and each criminal case involving the participants, including the case name, the file number, and the county and state of the proceeding, if that information is known by the party.
2. An order for protection is in addition to and not in lieu of any other available civil or criminal proceeding. A petitioner is not barred from seeking an order because of other pending proceedings. A court shall not delay granting relief because of the existence of a pending action between the parties.
3. A petitioner may omit his or her address from all documents filed with the court. If a petitioner omits his or her address, the petitioner must provide the court a mailing address. If disclosure of petitioner's address is necessary to determine jurisdiction or consider venue, the court may order the disclosure to be made:
   a. After receiving the petitioner's consent;
   b. Orally and in chambers, out of the presence of the respondent and with a sealed record to be made; or
   c. After a hearing, if the court takes into consideration the safety of the petitioner and finds such disclosure is in the interest of justice. [TCR 96-55, 06-26]

12-224 Emergency Order for Protection; Available Relief; Availability of Judge or Court Officer.

1. A court may issue a written or oral emergency order for protection ex parte when a law enforcement officer states to the court in person or by telephone, and the court finds reasonable grounds to believe, that an incident of Domestic or Family Violence occurred.
2. A law enforcement officer who receives an oral order for protection from a court shall:
   a. Write and sign the order on the form required;
   b. Serve a copy on the respondent;
   c. Immediately provide the petitioner with a copy of the order; and
   d. Provide the order to the court by the end of the next working day.
3. The court may grant the following relief in an emergency order for protection:
   a. Enjoin the respondent from threatening to commit or committing acts of domestic or family violence against the petitioner and any designated family or household member; any Domestic Violence Program personnel and/or their families; or any law enforcement or court employees and/or their families.
   b. Prohibit the respondent from harassing, annoying, telephoning, stalking, contacting, or otherwise communicating with the petitioner, directly or indirectly;

c. Remove and exclude the respondent from the residence of the Petitioner, regardless of ownership of the residence;
d. Order the respondent to stay away from the residence, school, place of employment of the petitioner, or any specified place frequented by the petitioner and any designated family or household member;
e. Order possession and use of essential personal effects, regardless of the ownership of the essential personal effects, and direct the appropriate law enforcement officer to accompany the petitioner to the residence of the parties to ensure that the petitioner is safely restored to possession of the residence, automobile, and other essential personal effects, or to supervise the petitioner's or respondent's removal of personal belongings. Cars will be excluded if the respondent can show that the car is being used for transportation to valid place of employment;
f. May grant temporary custody of a minor child to the petitioner; and
g. Order such other relief as the court deems necessary to protect and provide for the safety of the petitioner and any designated family or household member.

4. A judge or other court officer with authority to issue an order for protection must be available twenty-four (24) hours a day to hear petitions for emergency orders for protection. [TCR 96-55, 06-26]

12-225 Order for Protection; Modification of Orders; Relief Available Ex Parte; Relief Available After Hearing; Duties of the Court; Duration of Order.

1. If it appears from a petition for an order for protection or a petition to modify an order for protection that Domestic or Family Violence has occurred or a modification of an order for protection is required, a court may:
   a. Without notice or hearing, immediately issue an order for protection ex parte or modify an order for protection ex parte as it deems necessary to protect the petitioner.
   b. Upon notice, issue an order for protection or modify an order after a hearing whether or not the respondent appears.
2. A court may grant the following relief without notice and hearing in an order for protection or a modification issued ex parte:
   a. Enjoin the respondent from threatening to commit or committing acts of domestic or family violence against the petitioner and any designated family or household;
   b. Prohibit the respondent from harassing, annoying, telephoning, stalking contacting, or otherwise communicating with the petitioner, directly or indirectly;
   c. Remove and exclude the respondent from the residence of the petitioner, regardless of ownership of the residence;
   d. Order the respondent to stay away from the residence, school, or place of employment of the petitioner, or any specified place frequented by the petitioner and any designated family or household member;
   e. Prohibit the respondent from using or possessing a firearm or other weapon specified by the court;
   f. Order possession and use of an automobile and other essential personal effects, unless the respondent can show that the automobile is being used for transportation for employment; regardless of the ownership of the other essential effects, and direct the appropriate law enforcement officer to accompany the petitioner to the residence of the parties to ensure that the petitioner is safely restored to possession of the residence, automobile, and other essential personal effects, or to supervise the petitioner'*s* or respondent's removal of personal belongings;
   g. Grant temporary custody of any minor children to the petitioner; and

h. Order such other relief as it deems necessary to provide for the safety and welfare of the petitioner and any designated family or household member.

3. A court may grant the following relief in an order for protection or a modification of an order after notice and hearing, whether or not the respondent appears:
   a. Grant the relief available in accordance with subsection (2);
   b. Specify arrangements for visitation of any minor child by the respondent and require supervision of that visitation by a third party or deny visitation if necessary to protect the safety of the petitioner or child;
   c. Order the respondent to pay attorney's fees.
   d. Order the respondent to:
      i. Pay rent or make payment on a mortgage on the petitioner's residence and pay for the support of the petitioner and minor child if the respondent is found to have a duty to support the petitioner or minor child;
      ii. Reimburse the petitioner or other person for any expenses associated with the domestic or family violence including but not limited to medical expenses, counseling, shelter, and repair or replacement of damaged property; and
      iii. Pay the costs and fees incurred by the petitioner in bringing the action;
4. The court shall:
   a. Cause the order to be delivered to tribal court process server for service;
   b. Make reasonable effort to ensure that the order for protection is understood by the petitioner, and the respondent, if present;
   c. Transmit, by the end of the next business day after the order is issued, a copy of the order for protection to the local law enforcement agency or agencies designated by the petitioner; and
   d. Transmit a copy of the order to the state registry.
5. An order for protection issued ex parte or upon notice and hearing or a modification of an order for protection issued ex parte or upon notice and hearing is effective until further order of the court.
6. The Tribal Court shall provide expedited service for orders for protection. [TCR 96-55, 06-26]

12-226 Required Hearings; Duty When Order for Protection Denied.

1. Except as otherwise provided in subsection (2), if a court issues an order for protection ex parte or a modification of an order for protection ex parte and the court provides relief pursuant to subsection (2) of section 12-225, upon a request by either party within fourteen (14) days after service of the order or modification, the court shall set a date for a hearing on the petition. The hearing must be held within thirty (30) days after the request for a hearing is filed unless continued by the court for good cause shown. The court shall notify both parties by first class mail of the date and time of the hearing.
2. The court shall set a date for a hearing on the petition within fourteen (14) days after the filing of the petition if a court issues an order for protection ex parte or a modification of an order of protection ex parte, and:
   a. The petitioner requests or the court provided relief in accordance with paragraph (g) of subsection (2) of section 12-225, concerning custody of a minor child; or
   b. The petitioner requests relief pursuant to paragraph (b), (c), or (d) of subsection 3 of section 12-225.
   c. Such a hearing must be given precedence over all matters except older matters of the same character.
3. In a hearing held pursuant to subsection 1 or 2 of this section:
   a. Relief in accordance with section 12-225 is available.

b. If respondent seeks relief concerning an issue not raised by the petitioner, the court may continue the hearing at the petitioner's request.

4. If a court denies a petition for an order for protection or a petition to modify an order for protection that is requested without notice to the respondent, the court shall inform the petitioner of his or her right to request a hearing upon notice to the respondent. [TCR 96-55; 06-26]

12-227 Effect of Action by Petitioner or Respondent on Order. If a respondent is excluded from the residence of a petitioner or ordered to stay away from the petitioner, an invitation by the petitioner to do so does not waive or nullify an order for protection. [TCR 96-55, 06-26]

12-228 Denial of Relief Prohibited. The court shall not deny a petitioner relief requested pursuant to section 12-224 or 12-225 solely because of a lapse of time between an act of domestic or family violence and the filing of the petition. [TCR 96-55, 06-26]

12-229 Mutual Orders for Protection. A court shall not grant a mutual order for protection to opposing parties, unless good cause is shown and a specific finding is made that each party is entitled to such an order. [TCR 96-55, 06-26]

12-230 Mandatory Arrest for Certain Violations of Orders for Protection. If a person protected provides an officer with a copy of the protection order or the officer determines that such an order exists after communicating with the local law enforcement agency or court and the law enforcement officer has probable cause to believe that a respondent has violated a protection order issued in accordance with section 12-224 (3) (a), (b), (c) or (d), section 12-225 (2) (a), (b), (c), (d) or (e), or section 12-225 (3)(a), the officer shall, without a warrant, arrest the apparent violator whether the violation was committed in or outside the presence of the officer. [TCR 96-55, 06-26]

12-231 Violation of Certain Orders for Protection. Violation of one of the following orders issued in accordance with section 12-223 or section 12-224 is a class III offense and subject to enhancement as set forth in Section 12-203 (4). [TCR 96-55, 06-26]

12-232 Court-ordered and Court-referred Mediation Prohibited. A court shall not order parties into mediation or refer them to mediation for resolution of the issues in a petition for an order for protection. [TCR 96-55, 06-26]

12-233 Court Costs and Fees. There shall be no fees for any proceeding seeking only the relief provided in this Article, including but not limited to filing, service of process or dismissal. [TCR 96-55, 06-26]

12-234 Court-referred Assistance to Victims of Domestic and Family Violence.

1. The Tribal Court shall provide assistance to victims of Domestic or Family Violence by directing the individual to any agency or organization that has a record of service to victims of Domestic or Family Violence.
2. The Winnebago Domestic Violence Intervention Program shall coordinate the provision of services with the providers of programs for victims of Domestic or Family Violence and provide a Program for Victims of Domestic or Family Violence and a Program of Intervention for Perpetrators. [TCR 96-55, 06-26]

12-235 Registration and Enforcement of Foreign Orders for Protection; Duties of Court Clerk.

1. A certified copy of any order for protection issued in another state, county or tribal jurisdiction may be filed in the office of the clerk of the Tribal Court.
2 An order for protection has the same effect and must be enforced in the same manner as an order for protection issued by the Winnebago Tribal Court. The clerk of the Winnebago Tribal Court shall:
   a. Maintain a registry in which to enter certified orders for protection issued in other states or counties that are received for filing.
   b. At the request of a court of another state or county or at the request of a person who is affected by or has a legitimate interest in an order for protection, certify and forward a copy of the order to that court or person at no cost to the requesting party. [TCR 96-55, 06-26]

12-236 Mandatory Training. All court personnel, judges, court clerks, dispatcher, prosecutors, law enforcement personnel, advocates, and medical personnel shall be required to attend training regarding domestic violence, sexual assault, stalking, weapons violations, and full faith and credit of protection orders on an annual basis. [TCR 96-55, 06-26]

TITLE 12
FAMILY RELATIONS
ARTICLE 3
WINNEBAGO CHILD SUPPORT ENFORCEMENT IV-D PROGRAM ACT; ESTABLISHMENT AND DUTIES

12-301 Act, How Cited.
12-302 Purpose.
12-303 Definitions.
12-304 Authority and Responsibility of the WTN-CSE.
12-305 Program Participation and Funding.

12-301 Act, How Cited. Sections 12-301 to 12-305 shall be known and may be cited as the Winnebago Child Support Enforcement IV-D Program Act. [TCR 08-79]

12-302 Purpose. The purpose of the Winnebago Child Support Enforcement IV-D Program Act, Title 12, Article 3, is to formally establish the Winnebago Tribe of Nebraska Child Support Enforcement IV-D Program as the Tribal agency chargeable by Tribal law for providing the full range of child support services to the Winnebago community. The WTN-CSE will work with the Winnebago Tribal Court to reaffirm Tribal sovereignty and Tribal self-determination by providing for the exercise of the greatest possible Tribal jurisdiction over the greatest number of child support cases involving Tribal children and families. [TCR 08-79]

12-303 Definitions. Unless the context otherwise requires, as used in the Winnebago Tribal Code:

1. "Comprehensive Tribal Plan" means the comprehensive statement prepared by the Winnebago Tribe of Nebraska Child Support Enforcement IV-D Program identifying how the Tribe is meeting federal regulations, including 45 CFR Part 309, and that describes the capacity of the Tribe to operate a child support enforcement IV-D program which meets federal objectives, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents.
2. "IV-D" means Title IV-D of the Social Security Act that authorizes the Child Support Enforcement Program, including the Tribal Child Support Enforcement Program, and under which the federal government provides funds to tribes and states to administer child support enforcement IV-D programs to provide child support services to families.
3. "IV-D case" means a case where a party has applied for child support services from a Tribal or state child support enforcement IV-D agency or has assigned to the Tribe or State rights to child support because of the receipt of Tribal or state public assistance.
4. "WTN-CSE" means the Winnebago Tribe of Nebraska Child Support Enforcement IV-D Program.
5. "Winnebago Tribe of Nebraska Child Support Enforcement IV-D Program" means the Winnebago Tribal child support enforcement IV-D agency, which provides child support enforcement services to children and families and is authorized to seek:
   a. Location of obligors or their assets and obligees;
   b. Determination of parentage;
   c. Establishment and modification of child support; and
   d. Enforcement of support orders or laws relating to the duty of support. [TCR 08-79]

12-304 Authority and Responsibility of the WTN-CSE. The WTN-CSE has the authority and responsibility to provide child support enforcement services to the Winnebago community and to cooperate with other tribal and state child support IV-D programs. The duties of the WTN-CSE include:

1. To act as the official agency for the Winnebago Tribe of Nebraska in any child support enforcement activities not otherwise by Tribal law made the responsibility of another Tribal agency.
2. To develop, implement, and maintain the WTN-CSE Comprehensive Tribal Plan in compliance with federal child support regulations as necessary to entitle the Tribe to receive funds from the federal government under Title IV-D.
3. To ensure that the WTN-CSE continues to demonstrate its capacity to operate a Tribal IV-D Program by meeting the required elements under 45 CFR 309.65(a) and any other related federal regulations.
4. To develop, implement, and maintain policy and procedures, forms, and worksheets necessary to carry out the responsibilities of the WTN-CSE in conformity with Tribal Code, the WTN-CSE Comprehensive Tribal Plan, and all other federal and Tribal child support regulations.
5. To provide or arrange for child support services to children and families who come to the WTN-CSE for assistance. The services the WTN-CSE shall provide include establishing paternity, where necessary, locating parents who are legally liable for the support of the child, and securing and distributing support for the child.
6. To respond to and extend prompt services to other child support enforcement IV-D programs who refer IV-D cases to the WTN-CSE for assistance.
7. To administer income withholding for child support purposes.
8. To work with the Winnebago Tribe of Nebraska Finance Department for the purpose of receiving, processing, and disbursing child support payments, and for maintaining a record of payments, in all cases in which a tribal or state court has orders that payments for child support be made.
9. To create and maintain a case record which contains records necessary for the proper and efficient operation of the WTN-CSE and to ensure compliance with the WTN-CSE Comprehensive Tribal Plan. The WTN-CSE shall comply with the retention and access requirements of 45 CFR 74.53, including retaining records for at least three years. The case record must contain records with respect to:
   a. Applications for child support services;
   b. Efforts to locate noncustodial parents;
   c. Actions taken to establish paternity and obtain and enforce support;
   d. Amounts owed, arrearages, amounts and sources of support collections, and the distribution of such collections;
   e. IV–D program expenditures;
   f. Any fees charged and collected, if applicable; and
   g. Statistical, fiscal, and other records necessary for reporting and accountability required by the Secretary of the U.S. Department of Health and Human Services.
10. To participate in a Tribal guidelines committee or work group formed for the purpose of reviewing the Winnebago Tribal child support guidelines and implementing revisions recommended by the guidelines committee or work group.
11. To establish and implement a set of performance measurements for paternity establishment, support order establishment, amount of current support collected, amount of past due support collected, and any other performance measurements in order to ensure the proper and efficient operation of the WTN-CSE and to incorporate into federal reports.
12. To cooperate with and seek the cooperation and involvement of all appropriate public and private agencies including other tribal and state IV-D agencies, social services, Tribal and state public assistance agencies, foster care, law enforcement and any other agency or organization providing

or concerned with child support enforcement with the goal of providing services, effectively carrying out its duties, and achieving the purposes of this Act and other laws under the Winnebago Tribe of Nebraska Tribal Code. The WTN-CSE may negotiate working agreements with other jurisdictions, political subdivisions, and private entities, subject to approval by the Winnebago Tribe of Nebraska Chief Administrative Officer.

13. To strive to provide child support services to the community with dignity, respect, and fairness. [TCR 08-79]

12-305 Program Participation and Funding. The WTN-CSE and the Tribal Court are authorized to participate in any approved federal, state, Tribal, and public or private agency programs to carry out the purposes of this Article, subject to approval of the Tribal Council. The Tribal Council shall work jointly with the WTN-CSE to provide supplemental agency funding subject to the discretion of the Tribal Council. [TCR 08-79]

TITLE 12
FAMILY RELATIONS
ARTICLE 4
WINNEBAGO PARENTAGE ACT

12-401 Act, How Cited.
12-402 Purpose of Act.
12-403 Definitions.
12-404 Subject Matter Jurisdiction.
12-405 Personal Jurisdiction.
12-406 Protection of Participants.
12-407 Authorized Release of Case Records and Other Information.
12-408 Publication of Proceedings.
12-409 Penalty for Unauthorized Disclosure.
12-410 Notice.
12-411 Establishment of Parent-Child Relationship.
12-412 No Discrimination Based on Marital Status.
12-413 Consequences of Establishment of Parentage.
12-414 Presumption of Paternity.
12-415 Tribal Acknowledgement and Denial of Paternity – Duties of the WTN-CSEP.
12-416 Tribal Acknowledgment of Paternity – Execution.
12-417 Tribal Denial of Paternity by a Presumed Father.
12-418 Rules for Tribal Acknowledgment and Denial of Paternity.
12-419 Effect of Tribal Acknowledgment or Denial of Paternity.
12-420 No Filing Fee.
12-421 Proceeding for Rescission.
12-422 Challenge After Expiration of Period for Rescission.
12-423 Procedure for Rescission or Challenge.
12-424 Full Faith and Credit.
12-425 Release of Information – Tribal Acknowledgment or Denial of Paternity.
12-426 Scope of Genetic Testing.
12-427 Order for Genetic Testing.
12-428 Requirements for Genetic Testing.
12-429 Report of Genetic Testing.
12-430 Genetic Testing Results – Rebuttal.
12-431 Costs of Genetic Testing.
12-432 Additional Genetic Testing.
12-433 Genetic Testing When Specimens Not Available.
12-434 Deceased Individual.
12-435 Identical Brothers.
12-436 Confidentiality of Genetic Testing.
12-437 Proceeding to Adjudicate the Parentage of a Child – Authorization.
12-438 Standing to Maintain Proceeding.
12-439 Parties to Proceeding.
12-440 No Limitation – Child Having No Presumed, Acknowledged, or Adjudicated Father.
12-441 Limitation – Child Having Presumed Father.
12-442 Authority to Deny Motion for Genetic Testing.
12-443 Limitation – Child Having Acknowledged or Adjudicated Father.
12-444 Joinder of Proceedings.
12-445 Proceeding Before Birth.
12-446 Child as Party – Representation.
12-447 Admissibility of Results of Genetic Testing – Expenses.
12-448 Consequences of Declining Genetic Testing.
12-449 Admission of Paternity Authorized.
12-450 Temporary Order.
12-451 Rules of Adjudication of Paternity.
12-452 Jury Prohibited.
12-453 Closed Hearings.
12-454 Order on Default.
12-455 Dismissal for Want of Prosecution.
12-456 Order Adjudicating Parentage.
12-457 Binding Effect of Determination of Parentage.
12-458 Liability for Collection of Support.
12-459 Application of the Winnebago Parentage Act.

12-401 Act, How Cited. Sections 12-401 to 12-459 shall be known and may be cited as the Winnebago Parentage Act. [TCR 08-79]

12-402 Purpose of the Act. The Winnebago Parentage Act shall be liberally interpreted and construed to promote the following:

1. Establishment of a confidential process by which the parental heritage of the children of the Winnebago Tribe of Nebraska may be identified;
2. Recognition of the right of every child to the physical, mental, emotional and monetary support of his or her parents; and
3. Tribal jurisdiction over the establishment of parentage of Tribal children. [TCR 08-79]

12-403 Definitions. Terms under this Article shall be liberally construed so as not to limit the jurisdiction of the Winnebago Tribal Court over Tribal children, and to facilitate the authority of the Tribal Court to act to protect the interests of Tribal children and their families. When interpreting terms not defined by this Article, the Tribal Court shall take into consideration Tribal laws and customs and may be defined according to their normal usage, or as defined in the federal regulations for Tribal Child Support Enforcement Programs found at 45 CFR § 309 et seq. Unless the context otherwise requires, as used in the Winnebago Tribal Code:

1. "Acknowledged father" means a man who has established a father-child relationship under the sections of Title 12, Article 4.
2. "Adjudicated father" means a man who has been adjudicated by a court of competent jurisdiction to be the father of a child.
3. "Alleged father" means a man who alleges himself to be, or is alleged to be, the genetic father or a possible genetic father of a child, but whose paternity has not been determined. The term does not include a presumed father or a man whose parental rights have been terminated or declared not to exist.
4. "Child" means an individual of any age whose parentage may be determined under the sections of this Article.
5. "Determination of parentage" means the establishment of the parent-child relationship by the signing of an acknowledgment of paternity under the sections of this Article or adjudication by the Court.
6. "Duress" means use of physical or psychological force to coerce a person to sign an acknowledgment of paternity.
7. "Effective date" means when the acknowledgment of paternity is fully executed, by the later of the signature dates.
8. "Ethnic or racial group" means, for purposes of genetic testing, a recognized group that an individual identifies as all or part of the individual's ancestry or that is so identified by other information.
9. "Former parent" means an acknowledged father who successfully rescinded or challenged an acknowledgment of paternity under this Article, a presumed father whose parentage was successfully rebutted under this Article, or an adjudicated father whose parentage was disestablished after an order issued under this Article was vacated.
10. "Fraud" means an intentional misrepresentation of a material fact.
11. "Genetic testing" means an analysis of genetic markers to exclude or identify a man as the father or a woman as the mother of a child. The term includes an analysis of one or a combination of the following:
    a. Deoxyribonucleic acid, and
    b. Blood-group antigens, red-cell antigens, human-leukocyte antigens, serum enzymes, serum proteins, or red-cell enzymes.

12. "Man" means a male individual of any age.
13. "Material mistake of fact" means a mistake as to the facts that could not have been known at the time a signatory executed an acknowledgment of paternity.
14. "Parent" means an individual who has established a parent-child relationship under the sections of this Article.
15. "Parent-child relationship" means the legal relationship between a child and a parent of the child. The term includes the mother-child relationship and the father-child relationship.
16. "Paternity index" means the likelihood of paternity calculated by computing the ratio between:
    a. The likelihood that the tested man is the father, based on the genetic markers of the tested man, mother, and child, conditioned on the hypothesis that the tested man is the father of the child, and
    b. The likelihood that the tested man is not the father, based on the genetic markers of the tested man, mother, and child, conditioned on the hypothesis that the tested man is not the father of the child and that the father is of the same ethnic or racial group as the tested man.
17. "Presumed father" means a man who, by operation of law under Section 12-414 of this Article, is recognized as the father of a child until that status is rebutted or confirmed in a judicial proceeding.
18. "Probability of paternity" means the measure, for the ethnic or racial group to which the alleged father belongs, of the probability that the man in question is the father of the child, compared with a random, unrelated man of the same ethnic or racial group, expressed as a percentage incorporating the paternity index and a prior probability.
19. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
20. "Signatory" means an individual who authenticates a record and is bound by its terms.
21. "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
22. "Tribal Court" means the Winnebago Tribal Court or Tribal Court of the Winnebago Tribe of Nebraska.
23. "Title IV-A" refers to title IV-A of the Social Security Act under which the federal government provides funds to tribes and states to provide temporary financial assistance to families using federal dollars.
24. "Title IV-D" means title IV-D of the Social Security Act, under which the federal government provides funds to tribes and states to administer child support programs that provide services related to child support.
25. "Title IV-E" refers to title IV-E of the Social Security Act under which the federal government provides funds to tribes and states to assist with the costs of operating foster care programs.
26. "Title XIX" refers to title XIX of the Social Security Act under which the federal government provides funds to states to provide medical care assistance through a state-operated and administered program that provides medical benefits for certain indigent or low-income persons in need of health and medical care.
27. "Tribe" means the Winnebago Tribe of Nebraska unless the context clearly indicates otherwise.
28. "WTN-CSEP" means the Winnebago Tribe of Nebraska Child Support Enforcement Program.
29. "Winnebago Tribe of Nebraska Child Support Enforcement IV-D Program" means the Tribal Child Support IV-D agency, which provides child support enforcement services to children and families and is authorized to seek:
    a. Location of obligors or their assets and obligees;
    b. Determination of parentage;
    c. Establishment or modification of child support; or
    d. Enforcement of support orders or laws relating to the duty of support. [TCR 08-79]

12-404 Subject Matter Jurisdiction. The Winnebago Tribal Court shall have jurisdiction over any proceeding arising under this Article and actions arising under the customs and traditions of the Winnebago Tribe of Nebraska affecting the determination of parentage in this Tribe. The Tribal Court shall apply the law and customs of this Tribe to adjudicate parentage. The applicable law does not depend on: (i) the place of birth of the child; or (ii) the past or present residence of the child. [TCR 08-79]

12-405 Personal Jurisdiction.

1. An individual may not be adjudicated to be a parent by the Winnebago Tribal Court unless the Tribal Court has personal jurisdiction over the individual. The Winnebago Tribal Court may exercise personal jurisdiction over a nonresident individual, or the guardian or conservator of the individual, if:
    a. The individual is personally served with a summons within the exterior boundaries of the reservation of the Winnebago Tribe of Nebraska;
    b. The individual submits to the jurisdiction of the Tribe by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
    c. The individual resided with the child or the child's biological mother within the exterior boundaries of the Winnebago Reservation;
    d. The individual resided within the exterior boundaries of the Winnebago Reservation and provided prenatal expenses or support for the child;
    e. The child resides within the exterior boundaries of the Winnebago Reservation as a result of the acts or directives of the individual;
    f. The individual engaged in sexual intercourse within the exterior boundaries of the Winnebago Reservation and the child may have been conceived by that act of intercourse; or
    g. There is any other basis consistent with the constitutions of this Tribe and the United States for the exercise of personal jurisdiction.
2. Lack of jurisdiction over one individual does not preclude the Court from making an adjudication of parentage binding on another individual over whom the Court has personal jurisdiction.
3. This Article does not create, enlarge, or diminish parental rights or duties under other laws of this Tribe.
4. Whenever state, federal, and other tribal courts have jurisdiction over any of the matters provided for in this Article, the Tribal Court shall have concurrent jurisdiction over the same matters, to the extent consistent with federal law.
5. Any limitations on jurisdiction contained in this Article are not intended to reflect the Winnebago Tribe of Nebraska's view as to the legally permissible limits of Tribal jurisdiction. [TCR 08-79]

12-406 Protection of Participants. Proceedings under this Article are subject to the laws of this Tribe governing the health, safety, privacy, and liberty of a child or other individual who could be jeopardized by disclosure of identifying information, including address, telephone number, place of employment, social security number, and the child's day care facility and school. The case records of the Tribal Court and the WTN-CSEP concerning any actions taken under this Article must be kept confidential except as provided in this Article. The Tribal Court and the WTN-CSEP shall not release information on the whereabouts of one party or the child to another party against whom a protective order with respect to the former party or the child has been entered. The Tribal Court and the WTN-CSEP shall not release information on the whereabouts of one party or the child to another person if the Tribe has reason to believe that the release of the information to that person may result in physical or emotional harm to the party or child. [TCR 08-79]

12-407 Authorized Release of Case Records and Other Information. The use or disclosure of personal information received or maintained by the WTN-CSEP and the Winnebago Tribal Court shall be limited to purposes directly connected with the WTN-CSEP and the Winnebago Tribal Court or titles IV-A, XIX, and IV-E, and for purposes prescribed by the Secretary of the U.S. Department of Health and Human Services in federal regulations codified at 45 CFR Part 309. The WTN-CSEP and Winnebago Tribal Court may limit the information disclosed to persons, agencies, and entities named in this Section to that information necessary to accomplish the purposes for which it is requested or for which it is being disclosed. Nothing in this Section gives these entities or persons the right to review or copy the complete case record. Records of the WTN-CSEP, including case notes and correspondence, may be disclosed to the following persons and entities, unless otherwise protected by this Section:

1. WTN-CSEP Staff;
2. Winnebago Tribal Court Judges;
3. Winnebago Tribal Court Clerks and Court Administrator for filing purposes;
4. Tribal Social Services agencies, including Tribal TANF;
5. State of Iowa or Nebraska IV-D employees directly connected with the administration of Titles IV-D, IV-A, IV-E, and XIX programs, as outlined in a cooperative agreement executed by the Tribe with Iowa or Nebraska;
6. A court having jurisdiction in parentage, support or abandonment proceedings or actions;
7. The legal guardian, attorney, or agent of a child;
8. An attorney requesting discovery as permissible under the laws of the Winnebago Tribe of Nebraska; or
9. An agency of the federal government or any other state or tribal child support enforcement IV-D program engaged in the establishment of paternity, a child support obligation, or the enforcement of support for a child in a case. [TCR 08-79]

12-408 Publication of Proceedings. When providing service by publication, the names of children in the matter shall not be disclosed. Only the child's initials shall be published. The Winnebago Tribe of Nebraska civil procedure laws are applicable to all instances of service by publication. [TCR 08-79]

12-409 Penalty for Unauthorized Disclosure. Any person, including but not limited to any Tribal employee, Tribal Court employees, and employees of the WTN-CSEP and Tribal TANF, who willfully discloses otherwise confidential information related to an action to determine parentage, other than expressly authorized and provided for under this Article, may be subject to a civil fine not to exceed five hundred ($500.00) dollars in addition to any disciplinary actions authorized under the Tribal personnel policies and procedures. Actions brought under this Section may be initiated by the Prosecutor upon the filing of a sworn statement of the alleged unauthorized disclosure. [TCR 08-79]

12-410 Notice. All parties to a proceeding under this Article shall receive written notice of the time and place of a proceeding and shall receive written notice of their right to be heard at such a proceeding. The Winnebago Tribe of Nebraska civil procedure laws are applicable to all determination of parentage proceedings. [TCR 08-79]

12-411 Establishment of Parent-Child Relationship.

1. The mother-child relationship is established between a woman and a child by:
   a. The woman having given birth to the child;
   b. An adjudication of the woman's maternity;
   c. Adoption of the child by the woman; or
   d. As otherwise provided by law.

2. Provisions of this Article relating to determination of paternity apply to determinations of maternity.
3. The father-child relationship is established between a man and a child by:
   a. An unrebutted presumption of the man's paternity of the child under Section 12-414 of this Article;
   b. An effective acknowledgment of paternity by the man under Sections 12-416 through 12-424 of this Article, unless the acknowledgment has been timely rescinded or successfully challenged;
   c. An adjudication of the man's paternity;
   d. Adoption of the child by the man; or
   e. As otherwise provided by law. [TCR 08-79]

12-412 No Discrimination Based on Marital Status. A child born to parents who are not married to each other has the same rights under the law as a child born to parents who are married to each other. [TCR 08-79]

12-413 Consequences of Establishment of Parentage. Unless parental rights are terminated, a parent-child relationship established under this Article applies for all purposes, except as otherwise provided by the laws of this Tribe. [TCR 08-79]

12-414 Presumption of Paternity.

1. A man is presumed to be the father of a child if:
   a. He and the mother of the child are married to each other and the child is born during the marriage;
   b. He and the mother of the child were married to each other and the child is born within three hundred (300) days after the marriage is terminated by death, annulment, declaration of invalidity, dissolution of marriage or after decree of separation;
   c. Before the birth of the child, he and the mother of the child married each other in apparent compliance with Tribal law, even if the attempted marriage is or could be declared invalid, and the child is born during the invalid marriage or within three hundred (300) days after its termination by death, annulment, declaration of invalidity, a decree of separation, or dissolution of marriage;
   d. After the birth of the child, he and the mother of the child married each other in apparent compliance with Tribal law, whether or not the marriage is or could be declared invalid, and he voluntarily asserted his paternity of the child, and:
      i. The assertion is in a record filed with the Tribal Court, WTN-CSEP, tribal enrollment office, or the state registrar for vital statistics.
      ii. He agreed to be and is named as the child's father on the child's birth certificate, or
      iii. He promised in a record to support the child as his own; or
   e. He openly held out the child as his own and the community accepted him as the child's father.
2. A presumption of paternity established under this Section may be rebutted only by an adjudication under Sections 12-437 through 12-459 of this Article. [TCR 08-79]

12-415 Tribal Acknowledgment and Denial of Paternity — Duties of the WTN-CSEP.

1. The WTN-CSEP and Winnebago Tribal Court must provide an alleged father the opportunity to voluntarily acknowledge paternity.

2. The WTN-CSEP shall prescribe standard forms that parents may sign to acknowledge or deny paternity and that shall be filed with the WTN-CSEP and the Winnebago Tribal Court.
3. A valid acknowledgment of paternity, rescission of acknowledgment of paternity, or denial of paternity is not affected by a later modification of the prescribed form. [TCR 08-79]

12-416 Tribal Acknowledgment of Paternity — Execution.

1. The mother of a child and a man claiming to be the genetic father of the child may execute a Tribal acknowledgement of paternity with intent to establish the man's paternity.
2. A Tribal acknowledgment of paternity shall:
   a. Be in a record;
   b. Be signed and notarized under penalty of perjury by the mother and by the man seeking to establish his paternity;
   c. State that the child whose paternity is being acknowledged:
      i. Does not have a presumed father, or has a presumed father whose full name is stated, and
      ii. Does not have another acknowledged or adjudicated father;
   d. State whether there has been genetic testing and, if so, that the acknowledging man's claim of paternity is consistent with the results of the testing; and
   e. State that the signatories understand that the acknowledgment is the equivalent of a judicial adjudication of paternity of the child and that after the rescission period has ended a challenge to the acknowledgment is permitted only on the basis of fraud, duress, or material mistake of fact.
3. The WTN-CSEP and/or the Winnebago Tribal Court shall instruct the parties to send the notarized Tribal Acknowledgment of Paternity form to the state department of public health to request the amendment of the birth record of the child, if appropriate. [TCR 08-79]

12-417 Tribal Denial of Paternity by a Presumed Father. A presumed father may sign a Tribal denial of his paternity. The denial is valid only if:

1. A Tribal acknowledgment of paternity signed, or otherwise authenticated, by another man is filed pursuant to Section 12-419 of this Article;
2. The Tribal denial of paternity is in a record, and is signed, or otherwise authenticated, under penalty of perjury;
3. The denial states facts establishing a possibility that sexual contact between the individuals, if any, did not result in the conception of the child.
4. The presumed father has not previously:
   a. Acknowledged his paternity, unless the previous acknowledgment has been rescinded pursuant to Section 12-421 of this Article or successfully challenged pursuant to Section 12-422 of this Article, or
   b. Been adjudicated to be the father of the child. [TCR 08-79]

12-418 Rules for Tribal Acknowledgment and Denial of Paternity.

1. A Tribal acknowledgment of paternity and a denial of paternity may be executed separately or simultaneously. If the acknowledgment and denial are both necessary, neither is valid until both are executed.
2. A Tribal acknowledgment of paternity or a denial of paternity may be signed before the birth of the child.
3. Subject to subsection 1 of this Section, a tribal acknowledgment of paternity or denial of paternity takes effect on the birth of the child or the execution of the document, whichever occurs later.

4. A Tribal acknowledgment of paternity or denial of paternity signed by a minor is valid if it is otherwise in compliance with this Article.
5. A Tribal acknowledgment or denial of paternity may be completed for a child who was not born within the exterior boundaries of the Winnebago Tribe of Nebraska. [TCR 08-79]

12-419 Effect of Tribal Acknowledgment or Denial of Paternity.

1. Except as otherwise provided in Sections 12-421 and 12-422 of this Article, a valid Tribal acknowledgment of paternity filed with the WTN-CSEP or the Winnebago Tribal Court is equivalent to an adjudication of paternity of a child and confers upon the acknowledged father all of the rights and duties of a parent and must be recognized as a basis for a support order in any proceeding to establish, enforce, or modify a support order.
2. Except as otherwise provided in Sections 12-421 and 12-422 of this Article, a valid Tribal denial of paternity by a presumed father filed with the WTN-CSEP or the Winnebago Tribal Court when executed in conjunction with a valid Tribal acknowledgment of paternity is equivalent to an adjudication of the nonpaternity of the presumed father and discharges the presumed father from all rights and duties of a parent. [TCR 08-79]

12-420 No Filing Fee. The WTN-CSEP shall not charge a fee for filing a Tribal acknowledgment of paternity, denial of paternity, rescission of acknowledgment of paternity, or rescission of denial of paternity. [TCR 08-79]

12-421 Proceeding for Rescission. A signatory may rescind a Tribal acknowledgment of paternity or denial of paternity by commencing a proceeding to rescind before the earlier of:

1. Sixty days after the effective date of the acknowledgment or denial, as provided in Section 12-418; or
2. Within ten days after the first hearing, in a proceeding to which the signatory is a party, before a court to adjudicate an issue relating to the child, including a proceeding that establishes a child support obligation. [TCR 08-79]

12-422 Challenge <u>After</u> Expiration of Period for Rescission.

1. After the period for rescission under Section 12-421 has expired, a signatory of a Tribal acknowledgment of paternity or denial of paternity may commence a proceeding to challenge the acknowledgment or denial only on the basis of fraud, duress, or material mistake of fact.
2. There is no time limitation on when a party may commence a proceeding to challenge the Tribal acknowledgment or denial of paternity as provided for in subsection 1 of this Section.
3. A party challenging a Tribal acknowledgment of paternity or denial of paternity has the burden of proof. [TCR 08-79]

12-423 Procedure for Rescission or Challenge.

1. Every signatory to a Tribal acknowledgment of paternity and any related Tribal denial of paternity shall be made a party to a proceeding to challenge the acknowledgment or denial.
2. For the purpose of challenging a Tribal acknowledgment of paternity or a denial of paternity, a signatory submits to personal jurisdiction of this Tribe by signing the Tribal acknowledgment or denial of paternity.
3. Except for good cause shown, during the pendency of a proceeding to challenge a Tribal acknowledgment of paternity or denial of paternity, the Winnebago Tribal Court shall not

suspend the legal responsibilities of a signatory arising from the acknowledgment, including the duty to pay child support.

4. A proceeding to challenge a Tribal acknowledgment of paternity or denial of paternity shall be conducted in the same manner as a proceeding to adjudicate parentage under this Article.
5. At the conclusion of a proceeding to rescind or challenge a Tribal acknowledgment of paternity or denial of paternity, the Winnebago Tribal Court shall instruct the parties to send the Tribal Court order to the State department of public health to request the amendment of the birth record of the child, if appropriate. [TCR 08-79]

12-424 Full Faith and Credit. In any proceeding in which paternity or denial of paternity of a child is alleged, the Winnebago Tribal Court shall give full faith and credit to a determination of paternity or nonpaternity by another tribe or state, made before a determination of paternity under the laws of this Tribe, whether established through voluntary acknowledgment or through administrative or judicial processes. The paternity or nonpaternity determination made by the other jurisdiction must be in compliance with the law of that jurisdiction and due process satisfied. [TCR 08-79]

12-425 Release of Information – Tribal Acknowledgment or Denial of Paternity. The WTN-CSEP and the Winnebago Tribal Court may release copies of the Tribal acknowledgment of paternity or denial of paternity to a signatory of the acknowledgment or denial and to appropriate state and tribal courts or other state or tribal child support IV-D agencies. [TCR 08-79]

12-426 Scope of Genetic Testing. Sections 12-426 through 12-436 govern genetic testing of an individual to determine parentage, whether the individual:

1. Voluntarily submits to testing; or
2. Is tested pursuant to an order of the Winnebago Tribal Court. [TCR 08-79]

12-427 Order for Genetic Testing.

1. The Winnebago Tribal Court may order genetic testing.
2. Except as otherwise provided in Sections 12-426 through 12-436, the Winnebago Tribal Court shall order the child and other designated individuals to submit to genetic testing if the request for testing is supported by the sworn statement of a party to the proceeding:
   a. Alleging paternity and stating facts establishing a reasonable probability of the requisite sexual contact between the individuals; or
   b. Denying paternity and stating facts establishing a possibility that sexual contact between the individuals, if any, did not result in the conception of the child.
3. If a request for genetic testing of a child is made before the birth of the child, the Winnebago Tribal Court may not order in-utero testing.
4. If two or more men are subject to court-ordered genetic testing, the testing may be ordered concurrently or sequentially. [TCR 08-79]

12-428 Requirements for Genetic Testing.

1. Genetic testing must be of a type reasonably relied upon by experts in the field of genetic testing and performed in a testing laboratory accredited by:
   a. The American Association of Blood Banks, or a successor to its functions;
   b. The American Society for Histocompatibility and Immunogenetics, or a successor to its functions; or
   c. An accrediting body designated by the federal Secretary of Health and Human Services.

2. A specimen used in genetic testing may consist of one or more samples, or a combination of samples, of blood, buccal cells, bone, hair, or other body tissue or fluid. The specimen used in the testing need not be of the same kind for each individual undergoing genetic testing.
3. Based on the ethnic or racial group of an individual, the testing laboratory shall determine the databases from which to select frequencies for use in calculation of the probability of paternity. If there is a disagreement as to the testing laboratory's choice, the following rules apply:
    a. The individual objecting may require the testing laboratory, within thirty days after receipt of the report of the test, to recalculate the probability of paternity using an ethnic or racial group different from that used by the laboratory. The cost of any retesting shall be the responsibility of the individual who objected.
    b. The individual objecting to the testing laboratory's initial choice shall:
        i. If the frequencies are not available to the testing laboratory for the ethnic or racial group requested, provide the requested frequencies compiled in a manner recognized by accrediting bodies; or
        ii. Engage another testing laboratory to perform the calculations.
    c. The testing laboratory may use its own statistical estimate if there is a question regarding which ethnic or racial group is appropriate. If available, the testing laboratory shall calculate the frequencies using statistics for any other ethnic or racial group requested.
4. If, after recalculation using a different ethnic or racial group, genetic testing does not rebuttably identify a man as the father of a child under Section 12-430, an individual who has been tested may be required to submit to additional genetic testing. [TCR 08-79]

12-429 Report of Genetic Testing.

1. A report of genetic testing must be in a record and signed under penalty of perjury by a designee of the testing laboratory. A report made under the requirements of Sections 12-426 through 12-436 of this Article is self-authenticating.
2. Documentation from the testing laboratory of the following information is sufficient to establish a reliable chain of custody that allows the results of genetic testing to be admissible without testimony:
    a. The names and photographs of the individuals whose specimens have been taken;
    b. The names of the individuals who collected the specimens;
    c. The places and dates the specimens were collected;
    d. The names of the individuals who received the specimens in the testing laboratory; and
    e. The dates the specimens were received. [TCR 08-79]

12-430 Genetic Testing Results — Rebuttal.

1. Under this Article, a man is rebuttably identified as the father of a child if the genetic testing complies with Sections 12-426 through 12-436 and the results disclose that:
    a. The man has at least a ninety-nine percent probability of paternity, using a prior probability of five-tenths, as calculated by using the combined paternity index obtained in the testing; and
    b. A combined paternity index of at least one hundred to one.
2. A man identified under subsection 1 as the father of the child may rebut the genetic testing results only by other genetic testing satisfying the requirements of Sections 12-426 through 12-436 which:
    a. Excludes the man as a genetic father of the child; or
    b. Identifies another man as the possible father of the child.

3. Except as otherwise provided in Section 12-435, if more than one man is identified by genetic testing as the possible father of the child, the Winnebago Tribal Court shall order them to submit to further genetic testing to identify the genetic father. [TCR 08-79]

12-431 Costs of Genetic Testing.

1. Subject to assessment of costs under Sections 12-437 through 12-459 of this Article, the cost of initial genetic testing must be advanced:
   a. By the WTN-CSEP in a proceeding in which the WTN-CSEP is providing services;
   b. By the individual who made the request;
   c. As agreed by the parties; or
   d. As ordered by the Winnebago Tribal Court.
2. In cases in which the cost is advanced by the WTN-CSEP, the WTN-CSEP may seek reimbursement from a man who is rebuttably identified as the father. [TCR 08-79]

12-432 Additional Genetic Testing.

1. The Winnebago Tribal Court or the WTN-CSEP shall order additional genetic testing upon the request of a party who contests the result of the original testing.
2. If the previous genetic testing identified a man as the father of the child under Section 12-430, the Tribal Court or WTN-CSEP may not order additional testing unless the party provides advance payment for the testing. [TCR 08-79]

12-433 Genetic Testing When Specimens Not Available. If a genetic-testing specimen is not available from a man who may be the father of a child, for good cause and under circumstances the Winnebago Tribal Court considers to be just, the Court may accept voluntary genetic testing of the following individuals:

1. The parents of the man;
2. Brothers and sisters of the man;
3. Other children of the man and their mothers; and
4. Other relatives of the man necessary to complete genetic testing. [TCR 08-79]

12-434 Deceased Individual. For good cause shown, the Tribal Court may order genetic testing of a deceased individual. [TCR 08-79]

12-435 Identical Brothers.

1. The Winnebago Tribal Court may order genetic testing of a brother of a man identified as the father of a child if the man is commonly believed to have an identical brother and evidence suggests that the brother may be the genetic father of the child.
2. If each brother satisfies the requirements as the identified father of the child under Section 12-430 without consideration of another identical brother being identified as the father of the child, the Tribal Court may rely on non-genetic evidence to adjudicate which brother is the father of the child. [TCR 08-79]

12-436 Confidentiality of Genetic Testing. The report of genetic testing for parentage is confidential. An individual who knowingly releases an identifiable specimen of another individual for any purpose other than that relevant to the proceeding regarding parentage without a court order or the written permission of the individual who furnished the specimen is deemed to have violated the client's confidentiality and is subject to Section 12-409 of this Article. [TCR 08-79]

12-437 Proceeding to Adjudicate the Parentage of a Child — Authorization. A civil proceeding may be maintained to adjudicate the parentage of a child. The proceeding is governed by the Winnebago Civil Procedure Code. [TCR 08-79]

12-438 Standing to Maintain Proceeding. Subject to Sections 12-416 through 12-425 and Sections 12-441 and 12-443, a proceeding to adjudicate parentage may be maintained by:

1. The child;
2. The mother of the child;
3. A man whose paternity of the child is to be adjudicated;
4. The WTN-CSEP;
5. An authorized adoption agency or licensed child-placing agency; or
6. A representative authorized by law to act for an individual who would otherwise be entitled to maintain a proceeding but who is deceased, incapacitated, or a minor. [TCR 08-79]

12-439 Parties to Proceeding. The following individuals must be joined as parties in a proceeding to adjudicate parentage:

1. The mother of the child; and
2. A man whose paternity of the child is to be adjudicated. [TCR 08-79]

12-440 No Limitation — Child Having No Presumed, Acknowledged, or Adjudicated Father. A proceeding to adjudicate the parentage of a child having no presumed, acknowledged, or adjudicated father may be commenced at any time, even after:

1. The child becomes an adult, but only if the child initiates the proceeding; or
2. An earlier proceeding to adjudicate paternity has been dismissed based on the application of a statute of limitation then in effect. [TCR 08-79]

12-441 Limitation — Child Having Presumed Father.

1. Except as otherwise provided in subsection 2 of this Section, a proceeding brought by a presumed father, the mother, or another individual to adjudicate the parentage of a child having a presumed father must be commenced not later than ten years after the birth of the child.
2. A proceeding seeking to disprove the father-child relationship between a child and the child's presumed father may be maintained at any time if the Winnebago Tribal Court determines that:
   a. The presumed father and the mother of the child neither cohabited nor engaged in sexual intercourse with each other during the probable time of conception; and
   b. The presumed father never openly held out the child as his own.
3. For purposes of this Section and Section 12-442, an action to establish support for a child is a proceeding to adjudicate parentage if the child's presumed father raises nonpaternity as a defense to the action. [TCR 08-79]

12-442 Authority to Deny Motion for Genetic Testing.

1. In a proceeding to adjudicate the parentage of a child having a presumed father or to challenge the paternity of a child having an acknowledged father, the Winnebago Tribal Court may deny a motion seeking an order for genetic testing of the mother, the child, and the presumed or acknowledged father if the Court determines that:

a. The conduct of the mother or the presumed or acknowledged father estops that party from denying parentage; and
b. It would be inequitable to disprove the father-child relationship between the child and the presumed or acknowledged father.

2. In determining whether to deny a motion seeking an order for genetic testing under this Section, the Court shall consider the best interest of the child, including the following factors:
   a. The length of time between the proceeding to adjudicate parentage and the time that the presumed or acknowledged father was placed on notice that he might not be the genetic father;
   b. The length of time during which the presumed or acknowledged father has assumed the role of father of the child;
   c. The facts surrounding the presumed or acknowledged father's discovery of his possible nonpaternity;
   d. The nature of the relationship between the child and the presumed or acknowledged father;
   e. The age of the child;
   f. The harm that may result to the child if presumed or acknowledged paternity is successfully disproved;
   g. The nature of the relationship between the child and any alleged father;
   h. The extent to which the passage of time reduces the chances of establishing the paternity of another man and a child support obligation in favor of the child; and
   i. Other factors that may affect the qualities arising from the disruption of the father-child relationship between the child and the presumed or acknowledged father or the chance of other harm to the child.
3. In a proceeding involving the application of this Section, a minor or incapacitated child must be represented by a guardian ad litem.
4. Denial of a motion seeking an order for genetic testing must be based on clear and convincing evidence.
5. If the Court denies a motion seeking an order for genetic testing, it shall issue an order adjudicating the presumed or acknowledged father to be the father of the child. [TCR 08-79]

12-443 Limitation — Child Having Acknowledged or Adjudicated Father.

1. If a child has an acknowledged father, a signatory to the acknowledgment of paternity or denial of paternity may commence a proceeding seeking to rescind the acknowledgment or denial or challenge the paternity of the child only within the time allowed under Section 12-421 or 12-422.
2. If a child has an acknowledged father or an adjudicated father, an individual, other than the child, who is neither a signatory to the acknowledgment of a paternity nor a party to the adjudication and who seeks an adjudication of paternity of the child must commence a proceeding not later than ten years after the effective date of the acknowledgment or adjudication.
3. A proceeding under this Section is subject to the application of the principles of estoppel established in Section 12-442. [TCR 08-79]

12-444 Joinder of Proceedings. A proceeding to adjudicate parentage may be joined with a proceeding for adoption, termination of parental rights, child custody or visitation, child support, divorce, annulment, legal separation or separate maintenance, probate or administration of an estate, or other appropriate proceeding. [TCR 08-79]

12-445 Proceeding Before Birth. A proceeding to determine parentage may be commenced before the birth of the child, but may not be concluded until after the birth of the child. The following actions may be taken before the birth of the child:

1. Service of process;
2. Discovery; and
3. Except as prohibited by Section 12-427, collection of specimens for genetic testing. [TCR 08-79]

12-446 Child As Party — Representation.

1. A minor child is a permissible party, but is not a necessary party to a proceeding under Sections 12-437 through 12-459.
2. The Winnebago Tribal Court shall appoint a guardian ad litem to represent a minor or incapacitated child if the child is a party or the Court finds that the interests of the child are not adequately represented. The Court may apportion the costs of the guardian ad litem between the parties as appropriate. [TCR 08-79]

12-447 Admissibility of Results of Genetic Testing — Expenses.

1. Except as otherwise provided in subsection 3 of this Section, a record of a genetic-testing expert is admissible as evidence of the truth of the facts asserted in the report unless a party objects to its admission within fourteen days after its receipt by the objecting party and cites specific grounds for exclusion. The admissibility of the report is not affected by whether the testing was performed:
   a. Voluntarily or pursuant to an order of the Court or a support enforcement agency; or
   b. Before or after the commencement of the proceeding.
2. A party objecting to the results of genetic testing may call one or more genetic-testing experts to testify in person or by telephone, videoconference, deposition, or another method approved by the Tribal Court. Unless otherwise ordered by the Court, the party offering the testimony bears the expense for the expert testifying.
3. If a child has a presumed, acknowledged, or adjudicated father, the results of genetic testing are inadmissible to adjudicate parentage unless performed:
   a. With the consent of both the mother and the presumed, acknowledged, or adjudicated father; or
   b. Pursuant to an order of the Court under Section 12-427.
4. Copies of bills for genetic testing and for prenatal and postnatal health care for the mother and child which are furnished to the adverse party not less than ten days before the date of a hearing are admissible to establish:
   a. The amount of the charges billed; and
   b. That the charges were reasonable, necessary, and customary. [TCR 08-79]

12-448 Consequences of Declining Genetic Testing.

1. An order for genetic testing is enforceable by contempt.
2. If an individual whose paternity is being determined declines to submit to genetic testing ordered by the Winnebago Tribal Court, the Court for that reason may adjudicate parentage contrary to the position of that individual.
3. Genetic testing of the mother of a child is not a condition precedent to testing the child and a man whose paternity is being determined. If the mother is unavailable or declines to submit to genetic testing, the Court may order the testing of the child and every man whose paternity is being adjudicated. [TCR 08-79]

12-449 Admission of Paternity Authorized.

1. A respondent in a proceeding to adjudicate parentage may admit to the paternity of a child by filing a pleading to that effect or by admitting paternity under penalty of perjury when making an appearance or during a hearing.
2. If the Winnebago Tribal Court finds that the admission of paternity satisfies the requirements of this Section and finds that there is no reason to question the admission, the Court shall issue an order adjudicating the child to be the child of the man admitting paternity. [TCR 08-79]

12-450 Temporary Order.

1. In a proceeding under Sections 12-437 through 12-459, the Winnebago Tribal Court shall issue a temporary order for support of a child if the order is appropriate and the individual ordered to pay support is:
   a. A presumed father of the child;
   b. Petitioning to have his paternity adjudicated;
   c. Identified as the father through genetic testing under Section 12-430;
   d. An alleged father who has declined to submit to genetic testing;
   e. Shown by clear and convincing evidence to be the father of the child; or
   f. The mother of the child.
2. A temporary order may include provisions for custody and visitation as provided by other laws of this Tribe. [TCR 08-79]

12-451 Rules for Adjudication of Paternity. The Winnebago Tribal Court shall apply the following rules to adjudicate the paternity of a child:

1. The paternity of a child having a presumed, acknowledged, or adjudicated father may be disproved only by admissible results of genetic testing excluding that man as the father of the child or identifying another man as the father of the child.
2. Unless the results of genetic testing are admitted to rebut other results of genetic testing, a man identified as the father of a child under Section 12-430 must be adjudicated the father of the child.
3. If the Court finds that genetic testing under Section 12-430 neither identifies nor excludes a man as the father of a child, the Court may not dismiss the proceeding. In that event, the results of genetic testing, and other evidence, are admissible to adjudicate the issue of paternity.
4. Unless the results of genetic testing are admitted to rebut other results of genetic testing, a man excluded as the father of a child by genetic testing must be adjudicated not to be the father of the child. [TCR 08-79]

12-452 Jury Prohibited. The Winnebago Tribal Court, without a jury, shall adjudicate paternity of a child. [TCR 08-79]

12-453 Closed Hearings. On request of a party and for good cause shown, the Winnebago Tribal Court may close a proceeding under Sections 12-437 through 12-459. [TCR 08-79]

12-454 Order On Default. The Winnebago Tribal Court shall issue an order adjudicating the paternity of a man who:

1. After service of process, is in default; and
2. Is found by the Court to be the father of a child. [TCR 08-79]

12-455 Dismissal for Want of Prosecution. The Winnebago Tribal Court may issue an order dismissing a proceeding commenced under this Article for want of prosecution only without prejudice. An order of dismissal for want of prosecution purportedly with prejudice is void and has only the effect of a dismissal without prejudice. [TCR 08-79]

12-456 Order Adjudicating Parentage.

1. The Winnebago Tribal Court shall issue an order adjudicating whether a man alleged or claiming to be the father is the parent of the child.
2. An order adjudicating parentage must identify the child by name and date of birth.
3. The order must include the social security numbers of the child and the individuals determined to be the child's parents.
4. The order may contain any other provision in the best interest of the child, including payment of support, payment of expenses of the mother's pregnancy and confinement, custody of the child, visitation with the child, and furnishing of bond or other security for payment of support. A support order must be for a payment in an amount consistent with the Tribal child support guidelines promulgated by the Winnebago Tribal Court. All remedies for the enforcement of support, custody, and visitation orders under Title 12, Article 5 of the Winnebago Tribe of Nebraska Tribal Code apply. The Tribal Court has continuing jurisdiction to modify an order for future support of the child, subject to Title 12, Article 5 of the Winnebago Tribal Code, and for custody of and visitation of the child.
5. Except as otherwise provided in subsection 6 of this Section, the Court may assess filing fees, reasonable attorney's fees, fees for genetic testing, other costs, and necessary travel and other reasonable expenses incurred in a proceeding under Sections 12-436 through 12-459. The Court may award attorney's fees, which may be paid directly to the attorney, who may enforce the order in the attorney's own name.
6. The Court may not assess fees, costs, or expenses against the WTN-CSEP, except as provided by other law.
7. On request of a party and for good cause shown, the Court may order that the name of the child be changed.
8. If the order of the Court is at variance with the child's birth certificate, the Court shall instruct the parties of the order to send the order to the state department of public health to request an amended birth registration. An order adjudicating parentage must be filed with the state registrar of vital statistics. [TCR 08-79]

12-457 Binding Effect of Determination of Parentage.

1. Except as otherwise provided in subsection 2 of this Section, a determination of parentage is binding on:
   a. All signatories to an acknowledgment or denial of paternity as provided in Sections 12-416 through 12-425; and
   b. All parties to an adjudication by a court acting under circumstances that satisfy the jurisdictional requirements of Sections 12-404 and 12-405.
2. A child is not bound by a determination of parentage under this Article unless:
   a. The determination was based on an unrestricted acknowledgment of paternity and the acknowledgment is consistent with the results of genetic testing;
   b. The adjudication of parentage was based on a finding consistent with the results of genetic testing and the consistency is declared in the determination or is otherwise shown; or
   c. The child was a party or was represented in the proceeding determining parentage by a guardian ad litem.

3. In a proceeding to dissolve a marriage, the Court is deemed to have made an adjudication of the parentage of a child if the Court acts under circumstances that satisfy the jurisdictional requirements of Sections 12-404 and 12-405 and other applicable Tribal law, and the final order:
   a. Expressly identifies a child as a "child of the marriage," "issue of the marriage," or similar words indicating that the husband is the father of the child; or
   b. Provides for support of the child, custody of the child, or visitation with the child by the husband unless paternity is specifically disclaimed in the order.
4. Except as otherwise provided in subsection 2 of this Section, a determination of parentage may be a defense in a subsequent proceeding seeking to adjudicate parentage by an individual who was not a party to the earlier proceeding.
5. A party to an adjudication of paternity may challenge the adjudication only under law of the Winnebago Tribe of Nebraska relating to appeal, vacation of judgments, or other judicial review. [TCR 08-79]

12-458 Liability for Collection of Support.

1. The Winnebago Tribe of Nebraska is not liable for child support that was collected from or on behalf of a former parent and disbursed to an obligee as under Title 12, Article 5, of the Winnebago Tribe of Nebraska Tribal Code.
2. The Winnebago Tribe of Nebraska is not liable for child support that was collected from or on behalf of a former parent and retained by the Tribe unless ordered by a Court after being presented with genetic test results that would otherwise be admissible under this Article showing that the former parent is not the genetic parent of the child. [TCR 08-79]

12-459 Application of the Winnebago Parentage Act. This Act shall govern all proceedings to acknowledge paternity or adjudicate parentage commenced *after* the effective date of this Act. [TCR 08-79]

TITLE 12
FAMILY RELATIONS
ARTICLE 5
WINNEBAGO CHILD SUPPORT ACT
(as revised May 21, 2014)

PRELIMINARY PROVISIONS

12-501 Act, How Cited.
12-502 Findings.
12-503 Purpose.
12-504 Definitions.
12-505 Jurisdiction.
12-506 Protection of Participants — Confidentiality of Case Records.
12-507 Authorized Release of Case Records and Other Information.
12-508 Penalty for Unauthorized Disclosure.
12-509 Attorney Represents Tribe's Interest in the Enforcement of Child Support Obligations.
12-510 Notice.

ESTABLISHMENT & MODIFICATION OF CHILD SUPPORT

12-511 Duty to Support Children.
12-512 Liability of Stepparent For Support.
12-513 Termination of Parental Rights – Duty of Support.
12-514 Support For Children After Majority – Retroactive Application.
12-515 Support by Tribe – Liability of Parent's Estate.
12-516 Allowance to Parent for Support of Child.
12-517 Duration of Child Support Obligations.
12-518 Periodic Review of Child Support Orders.
12-519 Notice of Periodic Review of Child Support Orders.
12-520 Obligor's Duties Upon Review – Failure to Provide Information.
12-521 Notice of Review Determination.
12-522 Motion for Amendment of Child Support Order – How Made – Presumption When Obligor's Income Unknown.
12-523 Request For Review – Notice of Right to Request Review.

TRIBAL TANF & ASSIGNMENT OF CHILD SUPPORT PAYMENTS TO THE WTN-CSEP

12-524 Recipients of Tribal TANF - Assignment of Support Payments.
12-525 Families-First Distribution of Child Support Arrearages.
12-526 Existing Assignments.
12-527 Effect of Assignment.
12-528 Cooperation with Winnebago Tribe of Nebraska Child Support Enforcement Program (WTN-CSEP).
12-529 Non-Cooperation with the WTN-CSEP.
12-530 Assignment of Rights; Judgment.

LOCATION OF A MISSING OBLIGOR, ASSETS, AND OBLIGEE BY THE WTN-CSEP

12-531 Location Activities of the WTN-CSEP.

PAYMENTS, COLLECTIONS, DISTRIBUTION, AND ARREARS

12-532 Mandatory Payment of Child Support Obligations to the WTN-CSEP.
12-533 Collections and Distribution – General Rule, Current Receipt of Tribal TANF, Former Receipt of Tribal TANF.
12-534 Overpayments.
12-535 Arrears.
12-536 Child Support Order – Required Interest Statement on Arrears.
12-537 Interest Waived on Arrearages.
12-538 Offsets of Child Support.
12-539 Agreements to Waive Child Support.

CIVIL REMEDIES FOR ENFORCEMENT OF CHILD SUPPORT ORDERS

12-540 Income Withholding Order.
12-541 Immediate Income Withholding.
12-542 Subsequent Income Withholding Order – Provision of Notice of Impact of Income Withholding Law to Obligors.
12-543 Requests by Obligee for Income Withholding – Approval – Procedures and Standards.
12-544 Procedure – Notice to Obligor.
12-545 Hearing Upon Obligor's Request.
12-546 Mandatory Federal Income Withholding Form – Effect of Income Withholding Order.
12-547 Voluntary Income Withholding for Child Support – Limitations.
12-548 Service of Income Withholding Order on Income Payer.
12-549 Income Withholding - Duties and Liabilities of Income Payer under Income Withholding Order.
12-550 Requests for Information from Income Payer.
12-551 Amendment – Termination of Income Withholding Order.
12-552 Interstate Income Withholding – Initiation by the Winnebago Tribe of Nebraska to Another Jurisdiction.
12-553 Child Support Exempt from Process.
12-554 Administrative Seek Employment Orders.
12-555 Driver's License and Occupational License Suspension, Motor Vehicle Lien.
12-556 Contempt Proceedings for Nonpayment of Child Support.

INTERGOVERNMENTAL CHILD SUPPORT CASES – AFFORDING FULL FAITH AND CREDIT

12-557 Full Faith and Credit of Foreign Child Support Orders.

REGISTRATION OF FOREIGN CHILD SUPPORT ORDER FOR ENFORCEMENT

12-558 Registration of Foreign Child Support Order for Enforcement.
12-559 Effect of Registration for Enforcement.
12-560 Choice of Law.
12-561 Notice of Registration of Order.
12-562 Procedure to Contest Validity or Enforcement of Registered Order.
12-563 Burden on Party Contesting the Registration or Enforcement.

REGISTRATION OF FOREIGN CHILD SUPPORT ORDERS FOR MODIFICATION

12-564 Registration Child Support Order for Modification.
12-565 Modification of Child Support Order of Another Tribe or State.
12-566 Application of the Winnebago Child Support Act.
12-567 Transferring of a Foreign Child Support or Custody Case.
12-568 Effect of Accepting a Transferred Case.
12-569 Notice of Acceptance of Transferred Case.
12-570 Procedure to Contest the Acceptance of a Transferred Case.
12-571 Burden on Party Contesting the Transfer of a Case.

PRELIMINARY PROVISIONS

12-501 Act, How Cited. Sections 12-501 to 12-567 shall be known and may be cited as the Winnebago Child Support Act. [TCR 08-79]

12-502 Findings. The Winnebago Tribe of Nebraska has historically placed a great emphasis on the needs of its youth and families. Under values of the Tribe, children are viewed as sacred, and they are the Tribe's most important resource. The Tribe has a compelling interest to promote and maintain the health and well-being of Tribal children and families. The Winnebago Tribe of Nebraska acknowledges the financial difficulties and hardship facing many Tribal children due to a lack of parental support. The non-support of children by their parents is not consistent with the values of the Winnebago Tribe. The Tribe will not tolerate the non-support of its children. The Winnebago Tribe finds that it is in the best interests of the Tribe to make laws which establish a Tribal child support IV-D agency in an effort to offer the community effective, fair, accessible, and culturally appropriate child support services. [TCR 08-79]

12-503 Purpose. The Winnebago Child Support Act, Title 12, Article 5, has been enacted for the following purposes:

1. To ensure that children within the jurisdiction of the Winnebago Tribe of Nebraska receive adequate support from their parents;
2. To motivate parents to meet the financial and emotional needs of their children;
3. To compel, when necessary, the parent of a child to perform the moral and legal duties owed to the child;
4. To promote fairness to the children and families seeking services from the Winnebago Tribe of Nebraska Child Support Enforcement Program and who come before the Winnebago Tribal Court for actions under this Article;
5. To exercise Tribal sovereignty and open the lines of communication in working with foreign jurisdictions with the goal of providing a continuum of child support services to Tribal children whether they reside on or off the Winnebago Reservation;
6. To provide for the supervision and administration of child support functions on a Tribal-wide basis; and
7. To reaffirm Tribal sovereignty and Tribal self-determination by providing for the exercise of the greatest possible Tribal jurisdiction over the greatest number of child support cases involving Tribal children and families. [TCR 08-79]

12-504 Definitions. Terms under this Article shall be liberally construed so as not to limit the jurisdiction of the Winnebago Tribal Court over Tribal children, and to facilitate the authority of the Tribal Court to act to protect the interests of Tribal children and their families. When interpreting terms not defined by this Article, the Tribal Court shall take into consideration Tribal laws and customs. Unless in conflict with applicable Tribal law, terms not specifically defined in this Article shall be defined according to their normal usage, or as defined in the federal regulations for Tribal Child Support Enforcement Programs found at 45 CFR § 309 et seq. Unless the context otherwise requires, as used in this Article:

1. "Arrears Case Record: means the case record that is maintained by the WTN-CSEP and houses records related to child support arrears.
2. "Business day" means every day that is not a Saturday, Sunday or legal holiday.
3. "Child" means:
   a. A person under 18 years of age; and
   b. A person 18 or more years of age with respect to whom a child support order has been issued pursuant to the laws of a Tribe or State.
4. "Child support" means payments for the support of children, including payments for health insurance coverage or other medical support, and combined payments for the support of children

and spouses or former spouses, however denominated, if the payment is required by the order of a court or other governmental agency having authority to issue such orders.

5. "Court" means the Winnebago Tribal Court of the Winnebago Tribe of Nebraska.
6. "Delinquent" means a situation which occurs on the first working day after the day upon which a child support payment was identified as due and unpaid, and the total amount of unpaid child support is at least equal to the amount of child support payable in one month.
7. "Disposable income" means gross income less deductions required by law for taxes and social security.
8. "Employer" means income payer.
9. "Health care coverage" means health care benefits that are provided by a health plan. Health care coverage does not include any form of public medical assistance.
10. "Income" means any form of payment, regardless of source, owed to an obligor, including any earned, unearned, taxable or nontaxable income, workforce safety and insurance benefits, disability benefits, unemployment compensation benefits, annuity and retirement benefits, but excluding Tribal or State public assistance benefits.
11. "Income payer" means any person, partnership, firm, corporation, limited liability company, association, political subdivision, or department or agency of a tribe, state, or federal government owing income to an obligor and includes an obligor if the obligor is self-employed.
12. "Issuing state" means the state in which a tribunal issues a child support order or renders a judgment determining parentage.
13. "Issuing tribe" means the tribe in which a tribunal issues a child support order or renders a judgment determining parentage.
14. "Issuing tribunal" means the tribunal that issues a child support order or renders a judgment determining parentage.
15. "Medical support" means providing health care coverage for a joint child by carrying health care coverage for the joint child or by contributing to the cost of health care coverage, public coverage, unreimbursed medical expenses, and uninsured medical expenses of the joint child.
16. "Monthly support obligation" means an amount of child support ordered by a court in a proceeding to establish or modify a child support obligation, including amounts that are deferred for payment at a later date. The term is defined without regard to any amount of child support that an obligor is required to pay to avoid being held in contempt of court.
17. "Obligee" means a person, including a tribe, state, or political subdivision, to whom a duty of support is owed.
18. "Obligor" means any person owing a duty of support.
19. "Past-due support" means child support that is not paid by the earlier of:
    a. The date a court order established under law requires payment to be made; or
    b. The last day of the month or other period the payment was intended to cover.
20. "Payday" means the day upon which the income payer pays or otherwise credits the obligor.
21. "Public assistance" means temporary financial assistance given to needy persons by a tribal or state government agency.
22. "Public coverage" means health care benefits provided by any form of federal, state, or Tribal medical assistance. Medical benefits provided by the federal Indian Health Service (IHS) are considered public coverage.
23. "Register" means to file a child support order or judgment determining parentage in the office of the court manager or administrator.
24. "Registering tribunal" means a tribal or state tribunal in which a child support order is registered.
25. "Service member" means a member of the National Guard or a reserve unit of the United States armed forces and "active duty service" means an order to active duty under United States Code title 10.

26. "Title IV-A" refers to title IV-A of the Social Security Act, under which the federal government provides funds to tribes and states to provide temporary financial assistance to families using federal dollars.
27. "Title IV-D" means title IV-D of the Social Security Act, under which the federal government provides funds to tribes and states to administer child support programs that provide services related to child support.
28. "Title IV-E" refers to title IV-E of the Social Security Act, under which the federal government provides funds to tribes and states to assist with the costs of operating foster care programs.
29. "Title XIX" refers to title XIX of the Social Security Act, under which the federal government provides funds to states to provide medical care assistance through a state-operated and administered program that provides medical benefits for certain indigent or low-income persons in need of health and medical care.
30. "Tribal Court" means the Winnebago Tribal Court of the Winnebago Tribe of Nebraska.
31. "Tribe" means the Winnebago Tribe of Nebraska of the Winnebago Reservation.
32. "Winnebago Tribal TANF Program" means the Winnebago Tribal program charged with providing Temporary Assistance For Needy Families through Title IV-A of the Social Security Act.
33. "Tribunal" means a tribal or state court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify child support orders or to determine parentage.
34. "Uninsured medical expenses" means a child's reasonable and necessary health-related expenses if the child is not covered by a health plan or public coverage when the expenses are incurred.
35. "Unreimbursed medical expenses" means a child's reasonable and necessary health-related expenses if a joint child is covered by a health plan or public coverage and the plan or coverage does not pay for the total cost of the expenses when the expenses are incurred. Unreimbursed medical expenses do not include the cost of premiums. Unreimbursed medical expenses include, but are not limited to, deductibles, co-payments, and expenses for orthodontia, and prescription eyeglasses and contact lenses, but not over-the-counter medications if coverage is under a health plan.
36. "WTN-CSEP" means the Winnebago Tribe of Nebraska Child Support Enforcement Program.
37. "Winnebago Tribe of Nebraska Child Support Enforcement Program" means the Tribal Child Support Agency, which provides child support enforcement services to children and families and is authorized to seek:
    a. Location of obligors or their assets and obligees;
    b. Determination of parentage;
    c. Establishment or modification of child support; or
    d. Enforcement of support orders or laws relating to the duty of support. [TCR 08-79]

12-505 Jurisdiction.

1. The Winnebago Tribal Court shall have subject matter jurisdiction over any proceeding arising under this Article and actions arising under the customs and traditions of the Winnebago Tribe of Nebraska affecting the establishment, modification, and enforcement of child support. The Tribal Court shall apply the law and customs of this Tribe to set and enforce child support.
2. In a proceeding to establish, enforce, or modify a support order, the Tribal Court may assert personal jurisdiction under this Article over:
    a. All members or persons eligible for membership in the Winnebago Tribe of Nebraska;
    b. Any person eligible for membership in any federal or state recognized tribe coming under the jurisdiction of the Winnebago Tribe of Nebraska; or
    c. Any person who is alleged to be a parent of a child, including any unborn child, whose parenting partner is a member or eligible for membership in the Winnebago Tribe of Nebraska, or who is a member or eligible for membership in any federal or state recognized tribe coming under the jurisdiction of the Winnebago Tribe of Nebraska.

3. The Winnebago Tribal Court may exercise personal jurisdiction over a non-resident individual or the individual's guardian or conservator if:
   a. The individual is personally served with a summons within the exterior boundaries of the Winnebago Reservation;
   b. The individual submits to the jurisdiction of the Tribe by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
   c. The individual resided with the child within the exterior boundaries of the Winnebago Reservation;
   d. The individual resided within the exterior boundaries of the Winnebago Reservation and provided prenatal expenses or support for the child;
   e. The child resides within the exterior boundaries of the Winnebago Reservation as a result of the acts or directives of the individual;
   f. The individual engaged in sexual intercourse within the exterior boundaries of the Winnebago Reservation and the child may have been conceived by that act of intercourse; or
   g. There is any other basis consistent with the constitution or laws of the Tribe and the United States for the exercise of personal jurisdiction.
4. The Tribal Court has the authority to punish for contempt, committed in or out of the Court's presence.
5. Whenever state, federal, and other tribal courts have jurisdiction over any of the matters provided for in this Article, the Tribal Court shall have concurrent jurisdiction over the same matters, to the extent consistent with federal law.
6. The limitations on jurisdiction contained in this Article are not intended to reflect the Winnebago Tribe of Nebraska's view as to the legally permissible limits of Tribal jurisdiction. [TCR 08-79]

12-506 Protection of Participants — Confidentiality of Case Records. The case records of the Tribal Court and the Winnebago Tribe of Nebraska Child Support Enforcement Program concerning the actions taken under this Article must be kept confidential except as provided in this Article. The Tribal Court and the Winnebago Tribe of Nebraska Child Support Enforcement Program shall not release information on the whereabouts of one party or the child to another party against whom a protective order with respect to the former party or the child has been entered. The Tribal Court and the Winnebago Tribe of Nebraska Child Support Enforcement Program shall not release information on the whereabouts of one party or the child to another person if the Tribe has reason to believe that the release of the information to that person may result in physical or emotional harm to the party or child. [TCR 08-79]

12-507 Authorized Release of Case Records and Other Information.

1. The use or disclosure of personal information received or maintained by the Three Affiliated Division of Child Support Enforcement and the Winnebago Tribal Court shall be limited to purposes directly connected with the Winnebago Tribe of Nebraska Child Support Enforcement Program and the Winnebago Tribal Court or titles IV-A, XIX, and IV-E with the administration of other programs or purposes prescribed by the Secretary in regulations.
2. Records, including case notes and correspondence, may be disclosed to the following persons and entities, unless otherwise protected by this Section:
   a. WTN-CSEP Staff;
   b. Winnebago Tribal Court Judges;
   c. Winnebago Tribal Court Clerks and Court Administrator for filing purposes;
   d. Tribal Social Services agencies, including Tribal TANF;
   e. States of Iowa and Nebraska IV-D employees directly connected with the administration of Titles IV-D, IV-A, and XIX programs, as outlined in the cooperative agreements and any addendums between the Winnebago Tribe of Nebraska and these states;

f. A court having jurisdiction in parentage, support or abandonment proceedings or actions;
g. The legal guardian, attorney, or agent of a child;
h. An attorney requesting discovery as permissible under the laws of the Winnebago Tribe of Nebraska; or
i. An agency of the federal government or any other state or tribal child support enforcement IV-D program engaged in the establishment of paternity, a child support obligation, or the enforcement of support for a child in a case.

3. The WTN-CSEP and Winnebago Tribal Court may limit the information disclosed to persons, agencies, and entities named in this Section to that information necessary to accomplish the purposes for which it is requested or for which it is being disclosed. Nothing in this Section gives these entities or persons the right to review or copy the complete case record. [TCR 08-79]

12-508 Penalty for Unauthorized Disclosure. Any person, including but not limited to any Tribal employee, Tribal Court employees, and employees of the WTN-CSEP and Tribal TANF, who willfully discloses otherwise confidential information related to an action to determine parentage, other than expressly authorized and provided for under this Article, may be subject to a civil fine not to exceed five hundred ($500.00) dollars in addition to any disciplinary actions authorized under the Tribal personnel policies and procedures. Actions brought under this Section may be initiated by the filing of a sworn statement of the alleged unauthorized disclosure. [TCR 08-79]

12-509 Attorney Represents Tribe's Interest in the Enforcement of Child Support Obligations. In any action brought to establish paternity, secure repayment of governmental benefits paid, to secure current or future support of children, or establish, enforce, or modify a child support obligation, the WTN-CSEP may employ or contract with a licensed attorney. An attorney so employed or contracted represents the interest of the Tribe in the enforcement of child support obligations. Nothing in this Section may be construed to modify confidentiality required of the WTN-CSEP. Representation by the employed or contracted attorney may not be construed to create an attorney-client relationship between the attorney and any party or witness to the action, other than the Tribe, regardless of the name in which the action is brought. [TCR 08-79]

12-510 Notice. All parties to a proceeding under this Article shall receive written notice of the time and place of a proceeding and shall receive written notice of their right to be heard at such a proceeding. The Winnebago Tribe of Nebraska civil procedure laws are applicable to all child support cases unless a more specific procedure is provided in this Article. [TCR 08-79]

ESTABLISHMENT & MODIFICATION OF CHILD SUPPORT

12-511 Duty to Support Children. Parents shall give their children support and education suitable to the child's circumstances. The Tribal Court may compel either or both of the parents to provide for the support of their children by establishing a child support order upon an application of the Tribal child support guidelines, adopted as Title 1C of the Winnebago Tribal Court Rules. [TCR 08-79]

12-512 Liability of Stepparent For Support. A stepparent is not bound to maintain the spouse's child(ren) unless the child is received into the stepparent's family. If the stepparent receives the child into the family, the stepparent is liable, to the extent of the stepparent's ability, to support the child during the marriage and so long thereafter as they remain in the stepparent's family. Such liability may be enforced against the stepparent by any person furnishing necessaries to such children. If the children are received into the stepparent's family and supported by the stepparent, it is presumed that the stepparent does so as a parent, in which case the children are not liable to the stepparent for their support, or the stepparent to them for their services. The legal obligation of a natural or adoptive parent to support that person's children is not affected by the liability imposed upon their stepparent by this Section. [TCR 08-79]

12-513 Termination of Parental Rights — Duty of Support. A termination of parental rights does not terminate the duty of either parent to support the child before the child's adoption unless that duty is specially terminated by order of the Court after notice of a proposed termination or relinquishment is given to the Winnebago Tribe of Nebraska Child and Family Services in the manner appropriate for the service of process in a civil action under the laws of this Tribe. A termination of a child support obligation under this Section does not relieve a parent of the duty to pay any unpaid child support. [TCR 08-79]

12-514 Support For Children After Majority — Retroactive Application.

1. A judgment or order requiring the payment of child support until the child attains majority continues as to the child until the end of the month during which the child is graduated from high school or attains the age of nineteen years, whichever occurs first, if:
   a. The child is enrolled and attending high school and is eighteen years of age prior to the date the child is expected to be graduated; and
   b. The child resides with the person to whom the duty of support is owed.
2. A judgment or order may require payment of child support after majority under the circumstances described in subsection 1 of this Section.
3. The person to whom the duty of support is owed under either subsection 1 or 2 of this Section may file an affidavit with the Tribal Court stating that the requirements of subsection 1 are met, the school in which the child is enrolled, and the anticipated date of the child's graduation. Upon filing of the affidavit, the child support resumes pursuant to subsection 1 or pursuant to the terms of a judgment or order described in subsection 2. A fee may not be charged for filing such an affidavit.
4. The civil court clerk shall serve the affidavit by first-class mail upon the person owing the duty of support. If at any time thereafter the person owing the duty of support files a motion with the Tribal Court, supported by that person's affidavit that the child is no longer enrolled in or attending high school, the Court shall determine if the child is enrolled in and attending high school and shall enter an order accordingly.
5. This Section applies to child support orders concerning children described in subsection 1 or 2 of this Section, regardless of the date of entry of the order, provided that the affidavit described in subsection 3 of this Section is filed not later than ninety days after the child graduates from high school or reaches age nineteen, whichever occurs first.
6. This Section does not preclude the entry of an order for child support which continues after the child reaches age eighteen, if the parties agree, or if the Court determines the support to be appropriate.
7. For purposes of this Section, a child is treated as being in school during summer vacation if the child was enrolled in and attending school and did not graduate from high school at the end of the school period immediately preceding the summer vacation. [TCR 08-79]

12-515 Support by Tribe — Liability of Parent's Estate. If a parent chargeable with the support of a child dies leaving it chargeable upon the Tribe and leaving an estate sufficient for its support, the WTN-CSEP, in the name of the Tribe, may claim provision for its support from the parent's estate by civil action, and for this purpose may have the same remedies as any creditor against that estate and against the heirs, devisees, and next of kin of the parent. [TCR 08-79]

12-516 Allowance to Parent for Support of Child. The Tribal Court may direct an allowance to be made to a parent of a child out of the child's property for its past or future support and education on such conditions as may be proper, whenever such direction is for the child's benefit. [TCR 08-79]

12-517 Duration of Child Support Obligations. Unless dates for the commencement or termination of a child support obligation are specified by the Tribal Court's order, a judgment or order requiring the payment of child support is effective as to the child in the month in which the order is signed and continues until the end of the month in which the support obligation terminates. [TCR 08-79]

12-518 Periodic Review of Child Support Orders.

1. Each child support order must be reviewed by the WTN-CSEP no less frequently than thirty-six months after the establishment of the order or the most recent amendment or review of the order by the Tribal Court or WTN-CSEP unless:
   a. In the case of an order with respect to which there is in effect an assignment of the child support for receipt of public assistance, the WTN-CSEP has determined that a review is not in the best interests of the child and neither the obligor nor the obligee has requested review; or
   b. In the case of any other order neither the obligor nor the obligee has requested review.
2. Each child support order, in which there is in effect public assistance or with respect to which either the obligor or the obligee has requested review, must be reviewed by the WTN-CSEP if:
   a. More than twelve months have passed since the establishment of the order or the most recent amendment or review of that order by the Court or the WTN-CSEP, whichever is later; and
   b. The order provides for no child support and was based on a finding that the obligor has no ability to pay child support.
3. If, upon review, the WTN-CSEP determines that the order provides for child support payments in an amount that is inconsistent with the amount that would be required under the Winnebago Tribal Court Rules of Tribal Child Support Guidelines, the WTN-CSEP may seek an amendment of the order. If the order provides for child support payments in an amount less than eighty-five percent of the amount that would be required by those guidelines, the WTN-CSEP shall seek an amendment of the order.
4. If a child support order sought to be amended was entered at least one year before the filing of a motion or petition for amendment, the Court shall order the amendment of the child support order to conform the amount of child support payment to that required under the child support guidelines, whether or not the motion or petition for amendment arises out of a periodic review of a child support order, and whether or not a material change of circumstances has taken place, unless the presumption that the correct amount of child support would result from the application of the child support guidelines is rebutted. If a motion or petition for amendment is filed within one year of the entry of the order sought to be amended, the party seeking amendment must also show a material change of circumstances.
5. A determination that a child who is the subject of a child support order is eligible for public assistance provided by any state or tribal government agency, constitutes a material change of circumstances.
6. The availability of health insurance at reasonable cost to a child who is the subject of a child support order constitutes a material change of circumstances. The need to provide for a child's health care needs, through health insurance or other means, constitutes a material change of circumstances. [TCR 08-79]

12-519 Notice of Periodic Review of Child Support Orders.

1. The WTN-CSEP shall provide written notice that a child support order being enforced by the WTN-CSEP may be subject to review under Section 12-518. The notice may be sent by first-class mail to the obligor and the obligee, at the addresses they have most recently provided to the WTN-CSEP, at least thirty-five days before the commencement of the review.

2. The notice to the obligor must inform the obligor of the duty to furnish the information required by Section 12-520 and that a failure to furnish the required information may result in the entry of an order compelling the furnishing of the information. The notice must also inform the obligor that the review determination will be mailed to the obligor following the review. The notice must be accompanied by an income report form, together with instructions for the accurate completion of the income report form. [TCR 08-79]

12-520 Obligor's Duties Upon Review — Failure to Provide Information.

1. The obligor shall provide information to the WTN-CSEP concerning the obligor's income, which is sufficient to accomplish the review, no later than five working days before the date of review. The information must be furnished by providing an income report, in the form and manner required by the WTN-CSEP, accurately completed and attested to by the obligor, earnings statements secured from the obligor's current income payer if the obligor changed employment after the end of the latest income tax year for which the obligor filed a return, and providing:
   a. A verified copy of the latest income tax return, filed with the internal revenue service or any state official administering a state income tax if the obligor pays state income tax, which accurately reports the obligor's income for a fiscal year ending no more than seventeen months prior to the date of the review; or
   b. A written authorization by which the WTN-CSEP may secure a verified copy of the latest income tax return, filed with the tax commissioner, which accurately reports the obligor's income for a fiscal year ending no more than seventeen months prior to the date of review.
2. If the obligor has not produced information under subsection 1 of this Section concerning the obligor's income, sufficient to accomplish the review, the WTN-CSEP may base its review determination on the assumption that the obligor's income has increased at the rate of ten percent per year since the child support order under review was entered or last modified. [TCR 08-79]

12-521 Notice of Review Determination.

1. Following review, the WTN-CSEP shall promptly provide written notice of its determination on review. The notice may be sent by first-class mail to the obligor and the obligee, at the addresses they have most recently provided to the WTN-CSEP.
2. If the WTN-CSEP has made a determination that no amendment to the amount of child support should be sought, the notice must inform the obligor and the obligee of the right of each to challenge that determination by seeking an amendment to the amount of child support, from the Tribal Court, at any time before the termination of the support order.
3. If the WTN-CSEP has made a determination to seek an amendment in the amount of child support, the notice must be mailed at least thirty-five days before the date of a hearing on a motion for amendment made by the child support agency under Section 12-518, and must inform the obligor and the obligee of the right of each to challenge that determination by opposing that amendment before the Court. The notice to the obligor must be accompanied by:
   a. A proposed modification of the child support order to provide for payment of child support in the amount required under the Winnebago Tribe of Nebraska Tribal Court Child Support Guidelines;
   b. A document by which the obligor may consent to the proposed modification; and
   c. An address and telephone number that the obligor may use to receive information from or schedule a meeting with the WTN-CSEP staff. [TCR 08-79]

12-522 Motion for Amendment of Child Support Order — How Made — Presumption When Obligor's Income Unknown.

1. Upon a determination by the WTN-CSEP, made under Section 12-518, that it may or must seek amendment of a child support order, the WTN-CSEP may file and serve a motion and supporting documents.
2. The Tribal Court may determine the motion based upon the files, records, and evidence received in consideration of the motion. If the WTN-CSEP certifies that, despite diligent efforts to secure reliable information concerning the obligor's income, the obligor has not produced such information, and if the obligor provides the Tribal Court with no reliable evidence concerning the obligor's income, it is presumed that the obligor's income has increased at the rate of ten percent per year since the child support order was entered or last modified. [TCR 08-79]

12-523 Request For Review — Notice of Right to Request Review.

1. An obligor or an obligee may request review under Section 12-518, by applying to the WTN-CSEP for child support services, and indicating, in the manner there provided, a desire to have a child support order reviewed. Each judgment or order issued by the Tribal Court which includes an order for child support must include a statement advising of the right to request a review under this Section.
2. If a party to a child support matter is receiving services from the WTN-CSEP and an order for current child support has issued out of that matter, the WTN-CSEP shall provide notice of the right to request a review or further review of that child support order, to the obligor and obligee, not more than three years after the most recent child support order, review of that child support order, or notice of right to request a review of that child support order. [TCR 08-79]

TRIBAL TANF AND ASSIGNMENT OF CHILD SUPPORT PAYMENTS TO THE WTN-CSEP

12-524 Recipients of Tribal TANF — Assignment of Support Payments.

1. If public assistance is provided by the Winnebago TANF Program to or on behalf of a dependent child or a dependent child's caretaker, there is an assignment by operation of law to the Winnebago Tribal TANF Program of any and all rights in, title to, and interest in any support obligation, payment, and arrearages owed to or on behalf of the child or caretaker, not to exceed the amount of public assistance paid for or on behalf of the child or caretaker.
2. An assignment made to the Winnebago Tribal TANF Program is effective as to:
   a. Any current child support;
   b. Any accrued child support arrears, or the date the individual terminates assistance, whichever is later; and
   c. Any accrued child support arrears collected under federal tax intercept. The WTN-CSEP may contact a state IV-D agency to initiate a federal income tax refund offset only where there is a specific memorandum of understanding or cooperative agreement in place between the Tribe and the state regarding federal income tax refund offsets or as permitted by federal regulations. [TCR 08-79]

12-525 Families-First Distribution of Child Support Arrearages. When the WTN-CSEP collects support arrearages on behalf of an individual who is receiving public assistance provided under Section 12-525, and the WTN-CSEP has the option of applying the collection to arrears permanently assigned to the Winnebago Tribal TANF Program or to arrears temporarily assigned to the Winnebago Tribal TANF Program, the WTN-CSEP shall first apply the collection to satisfy those arrears that are permanently assigned to the Winnebago Tribal TANF Program. [TCR 08-79]

12-526 Existing Assignments. Assignments based on the receipt of public assistance, are permanently assigned to the Winnebago Tribal TANF Program. [TCR 08-79]

12-527 Effect of Assignment. Assignments in Sections 12-525 through 12-539 take effect upon a determination that the applicant is eligible for public assistance. The amount of support assigned under this Section may not exceed the total amount of public assistance issued or the total support obligation, whichever is less. [TCR 08-79]

12-528 Cooperation with Winnebago Tribe of Nebraska Child Support Enforcement Program (WTN-CSEP).

1. The caregiver of a minor child receiving public assistance from the Winnebago Tribal TANF Program or another tribal or state public assistance agency must cooperate with the efforts of the WTN-CSEP to establish paternity for the purposes of establishing a child support obligation and to collect support according to this Section.
2. An individual receiving public assistance from the Winnebago Tribal TANF Program shall cooperate with the WTN-CSEP by:
   a. Providing all known information regarding the alleged father or obligor, including name, address, date of birth, Social Security number, telephone number, place of employment or school, and the names and addresses of any relatives;
   b. Appearing at interviews, hearings and legal proceedings;
   c. Submitting to genetic tests including genetic testing of the child, under a judicial or administrative order; and
   d. Providing additional information known by the individual as necessary for cooperating in good faith with the WTN-CSEP.
3. A caregiver must notify the WTN-CSEP and the Winnebago Tribal TANF Program of all support the caregiver receives during the period the assignment of child support to the Winnebago Tribal TANF Program is in effect. Any child support payment actually received by a TANF applicant between the first day of the month in which a TANF application is received and the date the application is authorized for payment of Tribal TANF benefits, and any child support payment that is received by a recipient while the TANF case is open, is considered as unearned income in determining eligibility for Tribal TANF benefits and in calculating the amount of the Tribal TANF payment for that calendar month. The amount counted as income is the amount actually received by the caregiver. A portion of any child support payment received directly by the TANF applicant or recipient after the date the case is authorized for payment must be paid by the applicant or recipient to the Winnebago Tribal TANF Program. The applicant or recipient is allowed to retain up to **$50** of the child support received. [TCR 08-79]

12-529 Non-Cooperation with the WTN-CSEP.

1. After notification from a tribal or state public assistance agency, including the Winnebago Tribal TANF Program, that a dependent child's caretaker has applied for or is receiving any form of public assistance, the WTN-CSEP shall determine whether the party is cooperating with the WTN-CSEP in establishing paternity, child support, modification of an existing child support order, or enforcement of an existing child support order pursuant to Section 12-528.
2. If the WTN-CSEP determines that the caretaker is not cooperating with Section 12-528, the WTN-CSEP shall promptly notify the dependent child's caretaker and each public assistance agency providing public assistance to the caretaker that the caretaker is not cooperating with the Tribal child support agency. The public assistance agency shall notify each applicant or recipient in writing of the right to claim a good cause exemption from cooperating with the WTN-CSEP.

A copy of the notice must be furnished to the public assistance applicant or recipient and to the WTN-CSEP. The public assistance applicant or recipient and a representative from the WTN-CSEP shall acknowledge receipt of the notice by signing and dating a copy of the notice.

3. Upon notice of non-cooperation, the caretaker shall be sanctioned in the amount determined according to the public assistance agency responsible for enforcing the sanction. [TCR 08-79]

12-530 Assignment of Rights; Judgment.

1. The WTN-CSEP is joined as a party in each case in which rights are assigned under Section 12-524. The Tribal Court Administrator shall enter and docket a judgment obtained by operation of law in the name of the WTN-CSEP to the extent that the obligation has been assigned. After filing notice of an assignment with the Tribal Court Administrator, who shall enter the notice in the docket, the WTN-CSEP may enforce a judgment entered before the assignment of rights as if the judgment were granted to it, and in its name, to the extent that the arrearages in that judgment are assigned.
2. The WTN-CSEP is a real party in interest in any child support IV-D case where there has been an assignment of support. In all other child support IV-D cases, the WTN-CSEP has a pecuniary interest, as well as an interest in the welfare of the children involved in those cases. The WTN-CSEP may intervene as a matter of right in those cases to ensure that child support orders are obtained and enforced which provide for an appropriate and accurate level of child support and where applicable, medical and child care support. If the WTN-CSEP participates in a child support IV-D case where the action taken by the WTN-CSEP requires the use of an attorney's services, the WTN-CSEP shall be represented by an attorney consistent with the provisions in Section 12-509 of this Article. [TCR 08-79]

LOCATION OF A MISSING OBLIGOR, ASSETS, AND OBLIGEE BY THE WTN-CSEP

12-531 Location Activities of the WTN-CSEP.

1. The WTN-CSEP must attempt to locate obligors, obligees, or sources of income and/or assets when location is required to take necessary action in a child support case.
2. Location of an obligor is deemed necessary whenever the WTN-CSEP has no verified address or employer for obligor. Location of an obligee is deemed necessary when forms mailed to the last known address of the obligee are repeatedly returned "undeliverable" with no forwarding address or when child support collections disbursed to the obligee are returned "undeliverable" from the last known address. Location of an obligor's source(s) of income may be necessary for the establishment of a child support obligation or when enforcement of a child support obligation is required.
3. All sources of locate available to the WTN-CSEP shall be used to perform locate actions. [TCR 08-79]

PAYMENTS, COLLECTIONS, DISTRIBUTION, AND ARREARS

12-532 Mandatory Payment of Child Support Obligations to the WTN-CSEP.

1. In any action in which the Tribal Court orders that payments for child support be made, including, but not limited to, a child support order establishing an order for past support or reimbursement of public assistance, the Tribal Court shall provide in its order that the payments be paid to the WTN-CSEP for remittance to the obligee.
2. Each party subject to the order shall immediately inform the WTN-CSEP of the party's:
   a. Social security number;

b. Date of birth;
c. Residential and mailing addresses and any change of address;
d. Telephone number;
e. Motor vehicle operator's license number;
f. Employer's name, address, and telephone number; and
g. Change of any other condition which may affect the proper administration of this Article.

3. Each order for payment of child support must notify each party of the requirements of this Section and require the party to provide the information within ten days from the date of the order or ten days after any change in the information.
4. The requirements of this Section continue in effect until all child support obligations have been satisfied with respect to each child subject to the order.
5. The obligor or other income payer shall identify the obligor on the check or remittance by name, income payer number, and Social Security number, and shall comply with the income withholding laws of this Article.
6. A copy of the record of payments maintained by the WTN-CSEP is admissible evidence in court as proof of payments made through the WTN-CSEP without the need of testimony to prove authenticity. If support payments have not been disbursed to an obligee because the obligee is not located, the WTN-CSEP shall continue locate efforts following established WTN-CSEP policy and procedures for locate activities. [TCR 08-79]

12-533 Collections and Distribution — General Rule, Current Receipt of Tribal TANF, Former Receipt of Tribal TANF.

1. *General Rule*. Upon receipt of child support payments as provided for in Section 12-532, the WTN-CSEP must, in a timely manner:
   a. Apply collections first to satisfy current support obligations; and
   b. Pay all child support collections to the family unless the family is currently receiving or formerly received assistance from the Winnebago Tribal TANF program and there is an assignment of child support rights to the Tribal TANF program, or the WTN-CSEP has received a request for assistance in collecting support on behalf of the family from another tribal or state child support enforcement IV-D agency.
2. *Exception*. When the collections stem from a federal income tax refund offset, they must be applied to satisfy child support arrearages.
3. The WTN-CSEP may contact a state IV-D agency to initiate a federal income tax refund offset only where there is a specific memorandum of understanding or cooperative agreement in place between the Tribe and the State regarding federal income tax refund offsets or as permitted by federal regulations.
4. *Current Receipt of Tribal TANF*. If the family is currently receiving assistance from the Winnebago Tribal TANF program and has assigned support rights to the Tribe **and**:
   a. There is no request for assistance in collecting support on behalf of the family from a Tribal or State IV-D agency, the WTN-CSEP may retain any child support collected for the family up to the total Tribal TANF grant amount paid to the family for the month and must pay any excess money collected to the family.
   b. There is a request for assistance in collecting child support on behalf of the family from a Tribal or State IV-D agency, the WTN-CSEP may retain any child support collected up to the total TANF grant amount paid to the family for the month, and any excess money must be sent to the other Tribal or State IV-D agency for distribution ***unless*** the WTN-CSEP exercises the option to contact the requesting Tribal or State IV-D agency to determine appropriate distribution and distributes the collections as directed by the requesting agency.

5. *Former Receipt of Tribal TANF.* If the family formerly received assistance from the Winnebago Tribal TANF program and there is an assignment of support rights to the Tribe **and**:
   a. There is no request for assistance in collecting support from a Tribal or State IV-D agency, the WTN-CSEP shall pay current child support collections and arrearages owed to the family to the family. The WTN-CSEP may retain any excess collections, not to exceed the total amount of the Tribal TANF grant amount paid to the family. Any remaining collections must be paid to the family.
   b. There is a request for assistance in collecting support from a Tribal or State IV-D agency, the Tribal IV-D agency shall send all support collected to the requesting Tribal or State IV-D agency for distribution ***unless*** the WTN-CSEP exercises the option to contact the requesting Tribal or State IV-D agency to determine appropriate distribution and distributes the collections as directed by the requesting agency.
6. If there is no assignment of support rights to the Tribe and the WTN-CSEP has received a request for assistance in collecting support on behalf of the family from another Tribal or State IV-D agency, the WTN-CSEP must send all child support collected to the requesting IV-D agency for distribution Requests for Assistance from a Tribal or State IV-D Agency ***unless*** the WTN-CSEP exercises the option to contact the requesting Tribal or State IV-D agency to determine appropriate distribution and distributes the collections as directed by the requesting agency. [TCR 08-79]

12-534 Overpayments. If child support or maintenance is not assigned and an obligor has overpaid a child support or maintenance obligation because of a modification or error in the amount owed, the WTN-CSEP shall:

1. Apply the amount of the overpayment to reduce the amount of any child support arrearages owed to the obligee; and
2. If an overpayment exists after the reduction of any arrearage, reduce the amount of the child support remitted to the obligee by an amount no greater than 20 percent of the current monthly child support obligation and remit this amount to the obligor until the overpayment is reduced to zero. [TCR 08-79]

12-535 Arrears.

1. Whenever there is failure to make the payments as required under Section 12-532 of this Article, the civil court clerk may, and upon request of the obligee or WTN-CSEP, shall send notice of the arrears by first-class mail, with affidavit of service, to the person required to make the payments, or request the Tribal Court judge to issue a citation for contempt of court against the person who has failed to make the payments as provided under this Article. The citation may be served on that person by first-class mail with affidavit of service to the person's last-known address.
2. Remedies available for the collection and enforcement of support in this Article apply to cases with arrearages, including those in which the child or children for whom support is owed are emancipated and the obligor owes past support or has an accumulated arrearage as of the date of the youngest child's emancipation. Child support arrearages under this Section may include arrearages for child support, and, where applicable, medical support, child care, and unreimbursed medical expenses. [TCR 08-79]

12-536 Child Support Order — Required Interest Statement on Arrears. Each judgment or order requiring the payment of child support must include a statement that the child support obligation will accrue interest if not timely paid at the rate of ten percent per year from the date they become delinquent, and the interest shall be collected in the same manner as the payments upon which the interest accrues.

Accrual of interest and validity of the order are not affected by a failure to include the statement required by this Section. [TCR 08-79]

12-537 Interest Waived on Arrearages. The WTN-CSEP may suspend or waive judgment interest on an arrearage as part of an amnesty program, as an incentive for satisfying a child support obligation or complying with a payment plan, or if the WTN-CSEP determines that the judgment interest is not collectible through commercially reasonable efforts. Any judgment interest that is suspended or waived under this subsection may be reinstated by the Tribal Court at any time or by the WTN-CSEP if the obligor has failed to comply with a payment plan. [TCR 08-79]

12-538 Offsets of Child Support.

1. Notwithstanding Section 12-553, the Tribal Court may order that a specific amount of past-due child support owed by an obligor to an obligee be offset by an equal amount of past-due child support owed to the obligor by the obligee. An order for an offset is permitted under this subsection only if:
   a. The proposed offset is limited to past-due child support and does not apply to child support owed in the current month or owed in any future month;
   b. The proposed offset does not include any past-due child support that has been assigned;
   c. Neither party whose past-due child support obligation will be reduced or eliminated by the proposed offset owes past-due child support to another obligee; and
   d. The opportunity to offset past-due child support under this Section has not been used by either party as an incentive to avoid paying child support in the month in which it is due.
2. The order must include a specific finding that the proposed offset serves the best interests of the children to whom the obligor and obligee owe a duty of support.
3. The WTN-CSEP may issue an order offsetting past-due child support if neither party objects after being notified of the proposed offset.
4. Past-due child support owed by an obligor to an obligee may not be offset by past-due child support owed to the obligor by the obligee except as permitted in this Section.
5. An obligor's child support obligation for the current month or for a future month may not be offset by past-due child support or other debts owed to the obligor by an obligee unless the Tribal Court orders the offset as a method of satisfying an overpayment of child support that results from the establishment or reduction of a child support obligation.
6. An offset of child support under this Section is considered a payment of child support by both the obligor and the obligee. A copy of the order for an offset must be provided to the WTN-CSEP. [TCR 08-79]

12-539 Agreements to Waive Child Support. An agreement purporting to relieve an obligor of any current or future duty of child support is void and may not be enforced. An agreement purporting to waive past-due child support is void and may not be enforced unless the child support obligee and any assignee of the obligee have consented to the agreement in writing and the agreement has been approved by the Tribal Court. A copy of the order of approval must be provided to the WTN-CSEP. [TCR 08-79]

CIVIL REMEDIES FOR ENFORCEMENT OF CHILD SUPPORT ORDERS

12-540 Income Withholding Order. When a judgment or order requires the payment of child support or arrears, it may be enforced by an income withholding order, as provided in this Article, in addition to any other remedies provided by tribal law. [TCR 08-79]

12-541 Immediate Income Withholding.

1. Except as provided in subsection 2 of this Section, each judgment or order which requires the payment of child support subjects the income of the obligor to automatic income withholding, regardless of whether the obligor's support payments are delinquent.
2. If a party to a proceeding, who would otherwise be subject to immediate income withholding under subsection 1 of this Section, demonstrates, and the Tribal Court finds that there is good cause not to require immediate withholding, or if the parties, including any assignee of support rights, reach a written agreement that provides for an alternative arrangement for assuring the regular payment of child support, the Tribal Court need not subject the income of the obligor to immediate withholding and shall enter a written finding to this effect.
3. Notwithstanding Section 12-544, any failure to comply with an agreement under this subsection subjects the income of the obligor to income withholding under this Section.
4. A finding that there is good cause not to require immediate income withholding under subsection 2 of this Section must be based on at least:
   a. A written determination that, and an explanation of why, implementing immediate income withholding would not be in the best interests of the child;
   b. Proof of timely payment of previously ordered support, if any; and
   c. A requirement that the obligor keep the civil court clerk and the WTN-CSEP informed of any employment-related health insurance to which the obligor has access.
5. A written agreement for an alternative arrangement for assuring the regular payment of child support is effective only if the agreement at least, in addition to other conditions the parties agree to:
   a. Provides that the obligor shall keep the clerk of court and the WTN-CSEP informed of any employment-related health insurance to which the obligor has access;
   b. Describes the provisions by which regular payment of child support is assured; and
   c. Is reviewed and approved by the Tribal Court and entered into the Court's records. [TCR 08-79]

12-542 Subsequent Income Withholding Order — Provision of Notice of Impact of Income Withholding Law to Obligors. Each judgment or order issued by the Tribal Court which includes an order for support of minor children, but which does not require immediate income withholding, must include a statement that a delinquency in payment of the support due or the approved request of the obligee will result in an income withholding order being issued in accordance with this Article. [TCR 08-79]

12-543 Requests by Obligee for Income Withholding — Approval — Procedures and Standards.

1. An obligee may apply to the WTN-CSEP for approval of an income withholding request. The income of the obligor becomes subject to income withholding on the date an approved request is made.
2. In approving an obligee's request for income withholding, the WTN-CSEP shall consider:
   a. An obligor's threat to discontinue child support payments;
   b. An obligor's having made child support payments sufficient to avoid a delinquency but insufficient to conform to the ordered amount; and
   c. Any other factor applicable to the request for income withholding.
3. Upon application of an obligee requesting income withholding, the WTN-CSEP shall promptly approve or disapprove the request. The WTN-CSEP may not approve the obligee's request in a case where the Tribal Court has determined that there is good cause not to require immediate income withholding unless the Court first changes its determination. [TCR 08-79]

12-544 Procedure — Notice to Obligor. If immediate income withholding under Section 12-541 has not been implemented and an obligor is delinquent, if an obligee's request for income withholding is approved, or if the Tribal Court changes its finding that there is no longer good cause not to require immediate income withholding, the WTN-CSEP shall serve the notice required under this Section upon the obligor whenever issuing an income withholding order. The notice must state:

1. That the obligor is delinquent in the payment of child support, that a request for withholding has been made by the obligee and approved by the WTN-CSEP, or that there is no longer good cause not to require immediate income withholding, as the case may be, and the obligor is therefore subject to an income withholding order on all income;
2. The amount of child support owed and the amount of arrearage, if any;
3. The total amount of money that will be withheld by the income payer from the obligor's income in each month as determined under the Tribal Court Child Support Guidelines;
4. That the income payer may withhold an additional sum of up to three dollars per month to cover the income payer's expenses;
5. That the income withholding order has been issued without further order of the Tribal Court;
6. That the obligor may contest the issuance of the income withholding order by filing a written request for hearing within ten days of the date of the notice made under this Section;
7. That if the obligor contests the income withholding order pursuant to Section 12-545, a hearing will be held and the Court will determine and issue an order consistent with the requirements of Section 12-545; and
8. That the income withholding order applies to any current or subsequent income payer or period of employment. [TCR 08-79]

12-545 Hearing Upon Obligor's Request.

1. If the obligor files a request for a hearing within ten days of the date of the notice made pursuant to Section 12-544, the Tribal Court shall hold a hearing within ten working days after the date of the request.
2. The Tribal Court may order that the income withholding order be withdrawn if at the hearing the obligor establishes:
   a. In a case where withholding would be based on an alleged delinquency, that there has been a mistake in the identity of the obligor; or
   b. In a case where an approved request for withholding has been made by the obligee, that the approval of the request constituted an abuse of discretion.
3. If at the hearing the obligor establishes that there is an overstatement in the amount of support stated to be owed by the obligor, the Tribal Court may amend the amount to be withheld.
4. In the absence of a finding of a mistake of fact in a case where withholding would be based on an alleged delinquency, or in the absence of an abuse of discretion in the approval of an obligee's request for withholding, the Tribal Court shall confirm the income withholding order. Payment of past-due support after issuance of notice under Section 12-544 may not be the basis for an order that the income withholding order be withdrawn.
5. An obligor is not precluded, by subsection 1, from seeking appropriate relief from a judgment or order affecting a child support obligation nor is the Tribal Court precluded from granting such relief. An obligor's request for such relief, whether made by motion under Title 2, Article 2, Winnebago Civil Procedure Code, or otherwise, may not be considered during the hearing described in subsection 1 of this Section. [TCR 08-79]

12-546 Mandatory Federal Income Withholding Form — Effect of Income Withholding Order. An income withholding order must be issued in the name of the Winnebago Tribe of Nebraska using the standard federal income withholding form for notice of the order prescribed by the Secretary of the

United States Department of Health and Human Services under authority of 42 U.S.C. 666(b)(6)(A)(ii), contain only the information necessary for the income payer to comply with the income withholding order, and be directed to all current and subsequent income payers of the obligor. The income withholding order is binding on the income payer until further notice by the WTN-CSEP and applies to all current and subsequent periods in which income is owed the obligor by the income payer. The income withholding order has priority over any other legal process against the same income. [TCR 08-79]

12-547 Voluntary Income Withholding for Child Support — Limitations. An obligor may execute a document voluntarily authorizing income withholding from current or future income due the obligor from an income payer in an amount sufficient to meet any child support obligation imposed by the Tribal Court or otherwise. An income withholding authorization made under this Section is binding on the income payer one week after service upon the income payer by first-class mail, or in any other manner agreed to by the income payer, of a true copy of the executed income withholding authorization. The income payer shall deduct the sum or sums specified and pay them as specified by the income withholding authorization and any applicable imposition of a support obligation by a court. In addition, the income payer may deduct a fee of up to three dollars per month from the obligor's income to cover expenses involved in transmitting payment. Compliance by an income payer with an income withholding authorization issued under this Section discharges the income payer's liability to the obligor for that portion of the obligor's income. The income payer may not use the income withholding authorization as a basis for any disciplinary action against the obligor. [TCR 08-79]

12-548 Service of Income Withholding Order on Income Payer.

1. The WTN-CSEP shall serve the income withholding order on the income payer by first-class mail or in any other manner agreed to by the income payer, and upon the obligor by first-class mail to the obligor's last-known address.
2. If the obligor is subject to immediate income withholding under Section 12-541, an income withholding order must be served on any known income payer within two business days of the date of receipt of information necessary to carry out income withholding. Subject to the provisions of Section 12-551, if service of an income withholding order has been or may have been properly made under this Section, an income withholding order must be served on any subsequently identified income payer within two business days of the date of receipt of information necessary to carry out income withholding.
3. An income withholding order may also be issued and served at the request of the obligor.
4. The income payer shall withhold a stated child support obligation as determined under the Tribal Court Child Support Guidelines from the obligor's income at the time the obligor is paid for transmittal to the WTN-CSEP within seven business days of the date the obligor is paid, together with a report of the date upon which the amount was withheld from the obligor's income.
5. If an income payer is ordered to withhold amounts to satisfy an obligor's previous past due support, the income payer may also withhold an additional amount equal to 20% of the monthly child support obligation until the arrearage is paid. The income payer may also retain an additional sum of three dollars per month from the obligor's income to cover expenses involved in transmitting payment.
6. The amount to be withheld, including amounts to cover expenses involved in transmitting payment, may not exceed fifty percent of the obligor's disposable income from this income payer as provided under the Consumer Credit Protection Act (15 U.S.C. 1673(b)), but a payment of an amount less than the ordered amount must be accompanied by a written calculation disclosing any of the obligor's income and disposable income which is payable by the income payer.
7. The income payer shall begin withholding no later than the first payday that occurs after service of the income withholding order.

8. If the income payer is served with more than one income withholding order issued under this Article on a single obligor and the combined total amount to be paid under the income withholding orders exceeds fifty percent of the obligor's disposable income, the income payer shall withhold the maximum amount permitted under the Consumer Credit Protection Act (15 U.S.C. 1673(b)) and transmit to the WTN-CSEP that portion thereof which the obligee's claim bears to the combined total of all claims.
9. The income payer shall notify the WTN-CSEP in writing of the termination of a duty to pay income to the obligor within seven business days of the termination. The notification must include the name and address of the obligor's subsequent income payer, if known.
10. If the income payer is subject to income withholding orders for more than one obligor, the income payer may combine in a single payment the amounts for all obligors who have been ordered to pay the WTN-CSEP with identification of the amount attributed to each obligor. [TCR 08-79]

12-549 Income Withholding — Duties and Liabilities of Income Payer under Income Withholding Order.

1. Any income payer failing to comply with this Section or Section 12-548 may be punished for contempt of court. The Tribal Court shall first afford such income payer a reasonable opportunity to purge itself of such contempt.
2. Any income payer who fails or refuses to deliver income pursuant to an income withholding order, when such income payer has had in its possession such income, is personally liable for the amount of such income which the income payer failed or refused to deliver, together with costs, interest, and reasonable attorney's fees. If an income payer fails or refuses to deliver income for more than fourteen business days after the date an obligor is paid, the Tribal Court shall award damages in an amount equal to two hundred dollars or actual damages caused by the violation, whichever is greater, in addition to costs, interest, late fees, and reasonable attorney's fees. Any damages awarded under this subsection must be reduced by the amount of any late fees for the same payment which have been collected by the WTN-CSEP under subsection 9 of this Section. Any damages collected by the WTN-CSEP under this subsection must be paid to the WTN-CSEP for distribution under Section 12-532 and any remaining balance must be paid to the obligor. If an income payer has failed to deliver income for more than one obligor, any damages collected under this Section must be divided equally among all affected obligors.
3. Any employer who refuses to employ, dismisses, demotes, disciplines, or in any way penalizes an obligor on account of any proceeding to collect child support, on account of any order or orders entered by the Tribal Court in such proceeding, on account of the employer's compliance with such order or orders, or on account of an income withholding order, is liable to the obligor for all damages, together with costs, interest thereon, and reasonable attorney's fees resulting from the employer's action. The employer may be required to make full restitution to the aggrieved obligor, including reinstatements and backpay.
4. An income payer may be enjoined by the Tribal Court from continuing any action in violation of Section 12-548.
5. Any contempt proceeding against an income payer under this Section must be commenced within one year after the income payer's act or failure to act upon which such proceeding is based.
6. Compliance by an income payer with an income withholding order operates as a discharge of the income payer's liability to the obligor as to that portion of the obligor's income so affected.
7. Upon receipt of an order for support entered in another tribe or state and the registration of the foreign order with the Tribal Court, the WTN-CSEP shall initiate income withholding.
    a. An income payer within the exterior boundaries of the Winnebago Reservation shall withhold income based on foreign court orders for withholding that have been registered in the Winnebago Tribal Court.

b. An employer receiving an income withholding notice from another tribe or state that has been registered in the Winnebago Tribal Court shall withhold and distribute the funds as directed in the withholding notice and shall apply the law of the obligor's principal place of employment when determining:
   i. The employer's fee for processing an income withholding notice;
   ii. The maximum amount permitted to be withheld from the obligor's income; and
   iii. Deadlines for implementing and forwarding the child support payment.

c. An obligor may contest withholding under this subsection as provided for in this Section.

d. An employer receiving an income withholding order or notice from another tribe or state that has not been registered in the Winnebago Tribal Court must forward the order or notice to the WTN-CSEP for registration in Tribal Court before withholding and distributing the funds under the order.

8. An income payer who has been served with an income withholding order issued under Section 12-546 for an obligor which includes an amount for past-due support shall notify the WTN-CSEP before making any lump sum payment of one thousand dollars or more to the obligor. "Lump sum payment" includes pay in lieu of vacation or other leave, bonus, commission, and any other payment to an obligor but does not include periodic payments made on regular paydays as compensation for services and does not include reimbursement for expenses incurred by the obligor on behalf of the income payer.

a. An income payer who provides notice of a lump sum payment to the WTN-CSEP under this subsection may not make more than one-half of the payment to the obligor for thirty days from the date of the notice to WTN-CSEP or until the income payer receives written authorization from the WTN-CSEP to make the lump sum payment to the obligor, whichever occurs first.

b. Notwithstanding paragraph A of this subsection, an income payer who provides notice of a lump sum payment to the WTN-CSEP under this subsection may not make a lump sum payment to an obligor if the income payer has been notified that an execution, garnishment, attachment, or other process has been initiated regarding the lump sum payment to satisfy a child support obligation of the obligor.

c. An income payer who owes a lump sum payment under this subsection is subject to the duties and liabilities in this Section unless the context indicates otherwise.

d. This subsection does not apply to any portion of a lump sum payment that must be paid to satisfy an income withholding order issued under Section 12-546.

9. An income payer who complies with an income withholding order that is regular on its face is not subject to civil liability to any individual or agency for conduct in compliance with the order.

10. An income payer who fails to deliver income for more than seven business days after the date one or more obligors are paid may be charged a late fee equal to twenty-five dollars per obligor for each additional business day the payment is delinquent or seventy-five dollars for each additional business day the payment is delinquent, whichever is greater. A late fee charged under this subsection is payable fifteen days after service on the employer, by first-class mail, of notice of the imposition of the late fee. Failure to pay a late fee under this subsection may be punished as a contempt of court. Any late fee collected by the WTN-CSEP under this subsection must be paid to the WTN-CSEP for distribution under Section 12-532 and any remaining balance must be paid to the obligor. If an income payer has failed to deliver income for more than one obligor, any late fees collected under this Section must be divided equally among all affected obligors. [TCR 08-79]

12-550 Requests for Information from Income Payer.

1. The WTN-CSEP may mail a request for information to the income payer in any matter in which it secures reliable information that the income payer may be indebted to an obligor. The request must identify the obligor by name, and, if known, address and social security number.
2. Within ten days after receipt of a request for information issued under subsection 1 of this Section, an income payer shall provide the requester with a written statement informing the requester whether or not the income payer is, or within the one hundred eighty days immediately preceding receipt of the request has been, an income payer with respect to that obligor. If the income payer is, or within the previous one hundred eighty days has been, an income payer with respect to that obligor, the income payer shall furnish information to the requester, including:
   a. The amount of any income currently paid to the obligor, calculated on a monthly basis;
   b. The total amount of income paid to the obligor in the twelve months preceding the month in which the request is received;
   c. Information regarding any health insurance that may be made available to the obligor's children through the income payer;
   d. The social security number under which payment of any income by the income payer to the obligor is reported;
   e. The obligor's address; and
   f. If the income payer is no longer an income payer with respect to that obligor, the date of last payment and any forwarding address.
3. Any income payer failing to comply with any requirements of this Section may be punished for contempt of court. The Tribal Court shall first afford such income payer a reasonable opportunity to purge itself of contempt.
4. A proceeding against an income payer under this Section may be commenced upon motion by the WTN-CSEP and must be commenced within ninety days after the income payer's act or failure to act upon which such proceeding is based. [TCR 08-79]

12-551 Amendment — Termination of Income Withholding Order. Upon amendment or termination of an income withholding order, the WTN-CSEP shall send appropriate notice to the income payer. An income withholding order is to be amended by the WTN-CSEP when the total amount of money to be withheld is changed by elimination of arrearages or by court-ordered change in amount of child support. An income withholding order is to be terminated when the duty to support ceases and all child support arrearages have been paid. When two or more income payers have been subjected to income withholding orders with respect to a child support obligation, the WTN-CSEP shall suspend the income withholding order directed to one or more income payers, provided that the amount of child support withheld by the remaining income payer or payers equals the child support obligation determined under the Tribal Court Child Support Guidelines. The WTN-CSEP shall immediately reinstate any suspended income withholding order should any child support obligation of the obligor thereafter become delinquent. The WTN-CSEP shall provide a copy of the reinstated income withholding order, by first-class mail, to the obligor and the income payer. [TCR 08-79]

12-552 Interstate Income Withholding — Initiation by the Winnebago Tribe of Nebraska to Another Jurisdiction. On application of any applicant for IV-D services from the WTN-CSEP, an obligee or an obligor of a support order issued by this Tribe, or a public assistance agency to which an obligee has assigned support rights, the WTN-CSEP shall request the child support enforcement agency of another tribe or state in which the obligor of a support order derives income to enter the order for the purpose of obtaining income withholding against such income. The WTN-CSEP shall make that request within twenty days of the later of the date income withholding is determined appropriate or the date of receipt of any information necessary to carry out withholding. The WTN-CSEP shall compile and transmit to the child support agency of the other tribe or state all documentation required to enter an order

for this purpose. The WTN-CSEP shall also transmit to the child support agency of the other tribe or state certified copies of any subsequent modifications of the support order. If the WTN-CSEP receives notice that the obligor is contesting the income withholding in another tribe or state, it shall immediately notify the individual obligee of the date, time, and place of the hearings and of the obligee's right to attend. [TCR 08-79]

12-553 Child Support Exempt from Process. A child support obligation owed to an obligee who is a judgment debtor may not be subject to execution, garnishment, attachment, or other process except to satisfy that child support obligation. [TCR 08-79]

12-554 Administrative Seek Employment Orders.

1. *Court order*. For any support order being enforced by the WTN-CSEP, the WTN-CSEP may seek a court order requiring the obligor to seek employment if:
   a. Employment of the obligor cannot be verified;
   b. The obligor is in arrears in court-ordered child support or maintenance payments or both in an amount equal to or greater than three times the obligor's total monthly support and maintenance payments; and
   c. The obligor is not in compliance with a written payment plan.

   Upon proper notice being given to the obligor, the Tribal Court may enter a seek employment order if it finds that the obligor has not provided proof of gainful employment and has not consented to an order for income withholding under this Article or entered into a written payment plan approved by the Court or the WTN-CSEP.
2. *Contents of order*. The order to seek employment shall:
   a. Order that the obligor seek employment within a determinate amount of time;
   b. Order that the obligor file with the WTN-CSEP on a weekly basis a report of at least five new attempts to find employment or of having found employment, which report must include the names, addresses, and telephone numbers of any employers or businesses with whom the obligor attempted to seek employment and the name of the individual contact to whom the obligor made application for employment or to whom an inquiry was directed;
   c. Notify the obligor that failure to comply with the order is evidence of a willful failure to pay support under this Article;
   d. Order that the obligor provide the WTN-CSEP with verification of any reason for noncompliance with the order; and
   e. Specify the duration of the order, not to exceed three months. [TCR 08-79]

12-555 Driver's License and Occupational License Suspension, Motor Vehicle Lien. If the WTN-CSEP determines that the obligor is in arrears in court-ordered child support or maintenance payments or both in an amount equal to or greater than three times the obligor's total monthly child support payments and not in compliance with a written approved payment agreement pursuant to this Article, the WTN-CSEP is authorized to request assistance from another tribal or state child support enforcement IV-D agency in the pursuit of the suspension of the obligor's driver's license or occupational license. The WTN-CSEP is also authorized to request assistance from another tribal or state IV-D agency to seek a motor vehicle lien against the obligor. [TCR 08-79]

12-556 Contempt Proceedings for Nonpayment of Child Support.

1. If a person against whom an order or decree for support has been entered under this Article, or a comparable law from another jurisdiction, is in arrears in court-ordered child support payments in

an amount equal to or greater than the obligor's total monthly child support payments and is not in compliance with a written payment plan approved by the Tribal Court or the WTN-CSEP, the person may be cited and punished by the Tribal Court for contempt pursuant to this Section, this Article, and other applicable tribal law.

2. Any person found in contempt of court as specified in the Winnebago Tribe of Nebraska Code, Title I, Article 5, Contempts, may be subject to a civil fine not to exceed five hundred ($500.00) dollars and sentenced to serve no more than six (6) months in jail. A person may be subject to additional fines or jail time for subsequent violations of court orders. A person found in contempt of court for nonpayment of child support may make bond set by the Tribal Court pursuant to Section 1-806 of the Winnebago Code. The Tribal Court shall apportion the bond between the child support arrears and the court fine according to Section 1-806 of the Winnebago Code.
3. If the Tribal Court cites a person for contempt under this Section the Court may order the performance of community service work up to 32 hours per week for six weeks for each finding of contempt if the obligor:
   a. Is able to work full time;
   b. Works an average of less than 32 hours per week; and
   c. Has actual weekly gross income averaging less than 40 times the federal minimum hourly wage under United States Code, title 29, section 206(a)(1), or is voluntarily earning less than the obligor has the ability to earn, as determined by the Tribal Court.
4. An obligor is presumed to be able to work full time. The obligor has the burden of proving inability to work full time.
5. A person ordered to do community service work under this Section may, during the six-week period, apply to the Tribal Court or the WTN-CSEP to be released from the community service work requirement if the person:
   a. Provides proof to the Tribal Court or the WTN-CSEP that the person is gainfully employed and submits to an order for income withholding under this Article;
   b. Enters into a written payment plan regarding both current child support and arrearages approved by the Tribal Court and the WTN-CSEP; or
   c. Provides proof to the Tribal Court or the WTN-CSEP that, subsequent to entry of the order, the person's circumstances have so changed that the person is no longer able to fulfill the terms of the community service order.
6. The performance of community service work does not relieve a child support obligor of any unpaid accrued or accruing support obligation. [TCR 08-79]

INTERGOVERNMENTAL CHILD SUPPORT CASES — AFFORDING FULL FAITH AND CREDIT

12-557 Full Faith and Credit of Foreign Child Support Orders. The WTN-CSEP and Tribal Court shall recognize child support orders issued by other tribes and states, in accordance with the requirements under the Full Faith and Credit for Child Support Orders Act, 28 U.S.C. § 1738B. The WTN-CSEP shall extend the full range of services available under its IV-D plan to respond to all requests from, and cooperate with, other tribal and state IV-D agencies. [TCR 08-79]

REGISTRATION OF FOREIGN CHILD SUPPORT ORDER FOR ENFORCEMENT

12-558 Registration of Foreign Child Support Order for Enforcement.

1. A support order or an income-withholding order issued by a tribunal of another tribe or state may be registered in the Winnebago Tribal Court for enforcement.

2. A support order or income-withholding order of another tribe or state may be registered in the Winnebago Tribal Court by sending the following documents and information to the Winnebago Tribal Court:
   a. A motion and affidavit to the Tribal Court from the party requesting the order be registered.
      i. The affidavit must include a statement that a written request has been received from another tribe or state requesting the registration of a foreign order.
   b. Two copies of all orders to be registered including any modifications of an order, one of which much be certified by the issuing court.
   c. A sworn statement by the party seeking registration or a certified statement by the custodian of the records showing the amount of any arrearage. [TCR 08-79, 14-86]

12-559 Effect of Registration for Enforcement. A support order or income-withholding order issued in another tribe or state is registered when the order is filed in the Winnebago Tribal Court. A registered order issued in another tribe or state is enforceable in the same manner and is subject to the same procedures as an order issued by the Winnebago Tribal Court. Except as otherwise provided in this Article, the Winnebago Tribal Court shall recognize and enforce, but may not modify, a registered order if the tribunal that issued the order had jurisdiction. [TCR 08-79]

12-560 Choice of Law. The law of the tribe or state that issued the order governs the nature, extent, amount, and duration of current payments and other obligations of support and the payment of arrearages under the order. In a proceeding for arrearages, the statute of limitation under the laws of the Winnebago Tribe of Nebraska or of the state or tribe that issued the order, whichever is longer, applies. [TCR 08-79]

12-561 Notice of Registration of Order. When a support order or income-withholding order issued in another tribe or state is registered in the Winnebago Tribal Court, the Winnebago Tribal Court shall notify the nonregistering party. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order. The notice must inform the nonregistering party:

1. That a registered order is enforceable as of the date of registration in the same manner as an order issued by the Winnebago Tribal Court;
2. That a hearing to contest the validity or enforcement of the registered order must be requested within 20 days after notice;
3. That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted; and
4. Of the amount of any alleged arrearages.

Upon registration of an income-withholding order for enforcement, the Winnebago Tribal Court as the registering tribunal shall notify the obligor's employer pursuant to this Article. [TCR 08-79]

12-562 Procedure to Contest Validity or Enforcement of Registered Order.

1. A nonregistering party seeking to contest the validity or enforcement of a registered order in the Winnebago Tribal Court shall request a hearing within 20 days after notice of the registration. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to this Section.

2. If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.
3. If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the Winnebago Tribal Court shall schedule the matter for hearing and give notice to the parties of the date, time, and place of the hearing. [TCR 08-79]

12-563 Burden on Party Contesting the Registration or Enforcement.

1. A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one or more of the following defenses:
   a. The issuing tribunal lacked personal jurisdiction over the contesting party;
   b. The order was obtained by fraud;
   c. The order has been vacated, suspended, or modified by a later order;
   d. The issuing tribunal has stayed the order pending appeal;
   e. There is a defense under the laws or policy of this Tribe to the remedy sought;
   f. Full or partial payment has been made; or
   g. The statute of limitation precludes enforcement of some or all of the arrearages.
2. If a party presents evidence establishing a full or partial defense under this Section, the Winnebago Tribal Court may stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered order may be enforced by all remedies available under the laws of this Tribe.
3. If the contesting party does not establish a defense under this Section to the validity or enforcement of the order, the Winnebago Tribal Court shall issue an order confirming the order of the issuing tribunal.
4. Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration. [TCR 08-79]

REGISTRATION OF FOREIGN CHILD SUPPORT ORDERS FOR MODIFICATION

12-564 Registration Child Support Order for Modification. A party or the WTN-CSEP seeking to modify, or to modify and enforce, a child support order issued in another tribe or state shall register that order in the Winnebago Tribal Court in the same manner provided in Section 12-558 of this Article if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or later. The pleading must specify the grounds for modification. The Winnebago Tribal Court may enforce a child support order of another tribe or state registered for purposes of modification, in the same manner as if the order had been issued by the Tribal Court, but the registered order may be modified only if the requirements of this Section and Section 12-565 have been met. [TCR 08-79]

12-565 Modification of Child Support Order of Another Tribe or State.

1. After a child support order issued in another tribe or state has been registered in the Winnebago Tribal Court, the Tribal Court may modify that order after notice and hearing, it finds that:
   a. The following requirements are met:
      i. The child, the individual obligee, and the obligor do not reside within the exterior boundaries of the issuing tribe or state;
      ii. A petitioner who is a nonresident of the Winnebago Tribe of Nebraska seeks modification; and
      iii. The respondent is subject to the personal jurisdiction of the tribunal of the Winnebago Tribe of Nebraska; or

b. The child, or a party who is an individual, is subject to the personal jurisdiction of the Winnebago Tribal Court and all of the parties who are individuals have filed written consents in the issuing tribunal for the Winnebago Tribal Court to modify the support order and assume continuing, exclusive jurisdiction over the order. However, if the issuing tribe or state is a foreign jurisdiction that has not enacted a law or established procedures substantially similar to the procedures in this Article, the consent otherwise required of an individual residing within the external boundaries of the Winnebago Reservation is not required for the Winnebago Tribal Court to assume jurisdiction to modify the child support order.

2. Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by the Winnebago Tribal Court and the order may be enforced and satisfied in the same manner.

3. On issuance of an order modifying a child support order issued in another tribe or state, the Winnebago Tribal Court becomes the tribunal of continuing, exclusive jurisdiction.

4. The Winnebago Tribal Court shall recognize a modification of its earlier child support order by a tribunal of another tribe or state which assumed jurisdiction under the Full Faith and Credit for Child Support Orders Act, 28 U.S.C. § 1538B and, upon request, except as otherwise provided in this Article, shall:
   a. Enforce the order that was modified only as to amounts accruing before the modification;
   b. Enforce only nonmodifiable aspects of that order;
   c. Provide other appropriate relief only for violations of that order which occurred before the effective date of the modification; and
   d. Recognize the modifying order of the other tribe or state, upon registration, for the purpose of enforcement.

5. If all of the parties who are individuals reside within the external boundaries of the Winnebago Reservation and the child does not reside in the issuing tribe or state, the Winnebago Tribal Court has jurisdiction to enforce and to modify the issuing tribe's or state's child support order in a proceeding to register that order. The Winnebago Tribal Court exercising jurisdiction as provided in this Section shall apply the Full Faith and Credit for Child Support Orders Act, 28 U.S.C. § 1538B to the enforcement or modification proceeding, and the Court shall apply the procedural and substantive law of this Tribe.

   Within 30 days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows the earlier order has been registered. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the modified order of the new tribunal having continuing, exclusive jurisdiction. [TCR 08-79]

12-566 Application of the Winnebago Child Support Act. This Act shall govern all child support proceedings commenced *after* the effective date of this Act. [TCR 08-79]

12-567 Transferring of a Foreign Child Support or Custody Case. A support or custody case of another tribe or state may be transferred to the Winnebago Tribal Court if at least one of the parties or one of the children in the case is an enrolled member of the Winnebago Tribe of Nebraska. The following documents and information must be filed in the Winnebago Tribal Court:

1. A properly filed Motion to accept the transfer of the case with proper notice to all parties. The notice must be sent by United States Mail, with sufficient first class postage affixed, to the parties last known address. Proper notice must inform the parties of the following:

a. That a transferred case is enforceable as of the date of acceptance by the Winnebago Tribal Court;
b. That a transferred case is enforceable in the same manner as a case that originated in the Winnebago Tribal Court;
c. That a hearing to contest the acceptance of the transfer of a case must be requested in writing and filed with the Winnebago Tribal Court within 20 days of the filing of the Motion;
d. That failure to contest the acceptance of the transfer of a case within the required time frame will result in the acceptance of said case by the Winnebago Tribal Court and precludes further contest of that case with respect to any matter that could have been asserted;
e. The name of the child or children for which paternity was established;
f. The current support obligation if any; and
g. The amount of any alleged arrears if any.

2. A certified copy of the order transferring the case to the Winnebago Tribal Court from the transferring tribe or state.
3. Two copies including one certified copy of all orders including any modifications of an order.
4. A sworn statement by the party seeking registration or a certified statement by the custodian of the records showing the amount of any arrearage. [TCR 14-86]

12-568 Effect of Accepting a Transferred a Case. A support or custody case from another tribe or state that is properly transferred to the Winnebago Tribal Court becomes a Winnebago Tribal Court case. The jurisdiction of the transferring tribe or state terminates upon the Winnebago Tribal Court's acceptance of the transfer. A transferred case is enforceable in the same manner and is subject to the same procedures as an order issued by the Winnebago Tribal Court. A transferred case can be modified in the same manner as an order issued by the Winnebago Tribal Court. [TCR 14-86]

12-569 Notice of Acceptance of Transferred Case. When a case from another tribe or state has been transferred and accepted by the Winnebago Tribal Court, the Winnebago Tribal Court shall notify the parties and the transferring tribe or state that the Winnebago Tribal Court has accepted the transferred case. The notice must be accompanied by a copy of the transferred case's order or orders and any modifications of said order or orders. [TCR 14-86]

12-570 Procedure to Contest the Acceptance of a Transferred Case. Any named party in the transferred case may seek to contest acceptance of the transferred case. A party wishing to contest the acceptance of the transfer of a case must:

1. File a written objection with the Winnebago Tribal Court
2. This written objection must be filed within 20 days of the filing of the Motion
3. If any party fails to contest the transfer of the case in a timely manner the case will be accepted by the Winnebago Tribal Court.
4. If a party files a written objection with the Winnebago Tribal Court in a timely manner, the Winnebago Tribal Court shall schedule the matter for hearing and give notice to the parties of the date, time and location of the hearing. [TCR 14-86]

12-571 Burden on Party Contesting the Transfer of a Case.

1. A party contesting the transfer of a case from another tribe or state has the burden of proving one or more of the following defenses:
   a. The issuing tribunal lacked personal jurisdiction over the contesting party;
   b. The order was obtained by fraud;
   c. The order has been vacated, suspended, or modified by a later order;

d. The issuing tribunal has stayed the order pending appeal;
e. There is a defense under the laws or policy of the Winnebago Tribe of Nebraska to the remedy sought;
f. Full or partial payment has been made;
g. The statute of limitation precludes enforcement of some or all the arrearages.

2. If a party presents evidence establishing a full or partial defense under this Section, the Winnebago Tribal Court may stay the acceptance of the case, continue the proceedings to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the transferred case may be accepted and may be enforced by all remedies available under Winnebago Tribe of Nebraska's laws.
3. If the contesting party does not establish a defense to the transfer of the case under this Section, the Winnebago Tribal Court shall issue an order accepting the transfer of the case.
4. Acceptance of a transferred case whether by operation of law or after a hearing precludes further contest of the case with respect to any matter that could have been asserted at the time of the acceptance of the transfer. [TCR 14-86]

TITLE 13
TRIBAL EMPLOYMENT RIGHTS ORDINANCE (TERO)

Adopted September 19, 2005
Amended November 8, 2005
Repealed August 24, 2009
[TCR 05-140; 06-14; 09-114]

TITLE 14
PROBATE

SUMMARY OF CONTENTS

SECTION	ARTICLE-PAGE
1. TABLE OF REVISIONS	ii
2. TABLE OF CONTENTS	iii
3. ARTICLE 1: PROBATE	1-1

TITLE 14
TABLE OF REVISIONS

The following table is included in this title as a guide for determining whether each article properly reflects the current version. This table will be updated with the revision of each article.

Through usage and supplementation, pages in bound titles can be inserted and removed when sections are revised on an article-by-article basis. This table should be placed before the Table of Contents in the title.

The "Article" column lists each article, and the "Section" column lists any corresponding sections that have been revised, in sequence. The "Revised Date" column reflects the effective date of the revision (e.g., "6/20/15"). If an article is not listed in the table, it has not been revised since the December 2015 Winnebago Tribal Code update and distribution.

Article	**Section**	**Revised Date**

TITLE 14
ARTICLE 1
PROBATE

14-101 Jurisdiction.
14-102 General definitions.
14-103 Evidence as to death or status.
14-104 Records.
14-105 Oaths.
14-106 Notices.
14-107 Renunciation of inheritance.
14-108 Effect of divorce, annulment or decree of separation.
14-109 Effect of fraud and evasion.
14-110 Disqualification of a willful slayer.
14-111 Petition for appointment of administrator or executor.
14-112 Priorities of appointment.
14-113 Duties of administrator or executor.
14-114 Oath and letters of appointment.
14-115 Notice to creditors.
14-116 Priority of payment of demands against the estate.
14-117 Distribution of property if no taker.
14-118 Restrictions on interests.
14-119 Status of heirs.
14-120 Debts owed to the decedent.
14-121 Reopening of estates.
14-122 Rule of interpretation.
14-123 Construction.
14-124 Severability.
14-125 Citation.
14-126 Who may make a will.
14-127 Execution.
14-128 Holographic will.
14-129 Self-proved will.
14-130 Who may witness.
14-131 Choice of law as to execution.
14-132 Revocation by writing or by act a will or any part thereof is revoked.
14-133 Revocation by divorce; no revocation by other changes of circumstances.
14-134 Revival of revoked will.
14-135 Incorporation by reference.
14-136 Events of independent significance.
14-137 Requirement that devisee survive testator by one hundred hours.
14-138 Simultaneous death.
14-139 Rules of construction and intention.
14-140 Construction that will passes all property; after-acquired property.
14-141 Anti-lapse; deceased devisee; class gifts.
14-142 Failure of testamentary provision.
14-143 Exercise of power of appointment.
14-144 Non-exoneration.
14-145 Construction of generic terms to accord with relationship as defined for intestate successions.
14-146 Ademption by satisfaction.
14-147 Petition for letters testamentary.
14-148 Qualification of executor.
14-149 Appointment of executor.
14-150 Duties of executor; bond.
14-151 Creditors.
14-152 Accounting.
14-153 Distribution; closing estate.
14-154 Distribution; order in which assets appropriated; abatement.
14-155 Property discovered after estate closed.
14-156 Personal representative's and attorney's fees.
14-157 Homestead allowance.
14-158 Exempt property.
14-159 Family allowance.
14-160 Source, determination and documentation.
14-161 Applicable law.

TITLE 14
ARTICLE 1
PROBATE

14-101 Jurisdiction.
14-102 General definitions.
14-103 Evidence as to death or status.
14-104 Records.
14-105 Oaths.
14-106 Notices.
14-107 Renunciation of inheritance.
14-108 Effect of divorce, annulment or decree of separation.
14-109 Effect of fraud and evasion.
14-110 Disqualification of a willful slayer.
14-111 Petition for appointment of administrator or executor.
14-112 Priorities of appointment.
14-113 Duties of administrator or executor.
14-114 Oath and letters of appointment.
14-115 Notice to creditors.
14-116 Priority of payment of demands against the estate.
14-117 Distribution of property if no taker.
14-118 Restrictions on interests.
14-119 Status of heirs.
14-120 Debts owed to the decedent.
14-121 Reopening of estates.
14-122 Rule of interpretation.
14-123 Construction.
14-124 Severability.
14-125 Citation.
14-126 Who may make a will.
14-127 Execution.
14-128 Holographic will.
14-129 Self-proved will.
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14-135 Incorporation by reference.
14-136 Events of independent significance.
14-137 Requirement that devisee survive testator by one hundred hours.
14-138 Simultaneous death.
14-139 Rules of construction and intention.
14-140 Construction that will passes all property; after-acquired property.
14-141 Anti-lapse; deceased devisee; class gifts.
14-142 Failure of testamentary provision.
14-143 Exercise of power of appointment.
14-144 Non-exoneration.
14-145 Construction of generic terms to accord with relationship as defined for intestate successions.
14-146 Ademption by satisfaction.
14-147 Petition for letters testamentary.
14-148 Qualification of executor.
14-149 Appointment of executor.
14-150 Duties of executor; bond.
14-151 Creditors.
14-152 Accounting.
14-153 Distribution; closing estate.
14-154 Distribution; order in which assets appropriated; abatement.
14-155 Property discovered after estate closed.
14-156 Personal representative's and attorney's fees.
14-157 Homestead allowance.
14-158 Exempt property.
14-159 Family allowance.
14-160 Source, determination and documentation.
14-161 Applicable law.

14-101 Jurisdiction.

1. The Winnebago Tribal Court shall have the authority to appoint executors and administrators, determine heirs, determine the validity of wills, and to probate and distribute the estates and wills of any member of the Winnebago Tribe of Nebraska with respect to property located on the reservation except as to trust or restricted land subject to the jurisdiction of the United States.
2. The United States Department of Interior Office of Hearings and Appeals shall have the authority to appoint executors and administrators, determine heirs, determine the validity of wills, and to probate and distribute the estates and will of any member of the Winnebago Tribe of Nebraska

with respect to trust or restricted land on the reservation in accordance with the requirements of this Code. [TCR 03-192]

14-102 General definitions. The following words have the meanings given below when used in this Title 14, unless a different meaning is apparent from the context:

1. "Reservation" means all the territory within the exterior boundaries of the Winnebago Indian reservation (including Flowers Island and other Tribal land located east of the Missouri River) as set forth in the Winnebago Treaty of March 9, 1965 (14 Stat. 67 1) and the twenty (20) sections included in the strip purchased in Nebraska for Wisconsin Winnebagos (18 Stat . 170), June 22, 1874 and such lands as may be added thereto by Congress or the Tribe or reaffirmation of the title of lands through the courts to the Tribe, otherwise provided by law. This definition of reservation includes all rights-of-way, waterways, streams, lakes, highways, railroad rights-of-way, mineral rights, etc.
2. "Tribal member" means a member of the Winnebago Tribe of Nebraska.
3. "Tribe" means the Winnebago Tribe of Nebraska.
4. "Tribal Court" means the Court of the Winnebago Tribe of Nebraska.
5. "Trust real estate" or "trust land" means land held in trust by the United States Government for the benefit of the Tribe or a member of the Tribe.
6. Children and issue include adopted children, both legally and the traditional way of adoption and children of unwed parents where the Tribal Court or any other court of competent jurisdiction determines that paternity has been acknowledged or established. [TCR 03-192]

14-103 Evidence as to death or status. In proceedings under this Title 14, the Rules of Evidence in civil procedure, including any relating to simultaneous deaths, are applicable unless specifically displaced by this Title 14. In addition, the following rules relating to determination of death or status are applicable:

1. A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie proof of the fact, place, date and time of death and the identity of the decedent;
2. A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that a person is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances and places disclosed by the record or report;
3. A person who is absent for a continuous period of seven years, during which he/she has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead. His/her death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier. [TCR 03-192]

14-104 Records. The clerk of the Tribal Court shall keep a file for each decedent's estate of all the documents filed with the Court pursuant to this Title 14. Upon payment of the fees required by law, the clerk must issue certified copies of any probated wills, letters issued to personal representatives, or any other record or paper filed, or recorded. The certificates relating to letters must show the date of appointment. [TCR 03-192]

14-105 Oaths. Except as otherwise provided in this Title 14, every document filed with the clerk pursuant to this Title 14 shall be deemed to include an oath to the effect that the representations are true to the best knowledge, information and belief of the person subscribing and signing the document. Deliberate falsifications of such documents shall subject the individual to penalties of perjury. [TCR 03-192]

14-106 Notices. Whenever notice of a hearing on any petition or other probate document or matter is required and except for specific notice requirements otherwise provided, proper notice of the time and place of any hearing to be given to any interested person or his/her attorney shall be given as follows:

1. By mailing a true copy of said notice together with the supporting documents at least fourteen days prior to the time fixed for hearing by first class mail addressed to the person to be notified or his/her attorney at the last known post office address given for either, or at his/her last known office or place of residence, or
2. By delivering a true copy thereof to the person to be notified at least fourteen days prior to the date fixed for hearing.
3. If the address or identity of any such person is not known and cannot by the exercise of reasonable diligence be ascertained, notice shall be given by (a) posting a copy of such notice in at least three conspicuous public braces on the reservation, such places to be fixed by the Tribal Court for the purpose of posting public notices, for at least fourteen (14) days prior to the time fixed for hearing; and (b) by publishing at least once a week for three consecutive weeks a copy of such notice in a legal newspaper having a general circulation on the reservation, the last publication of which is to be at least three days before the time set for hearing.

Proof of the giving of such notice shall be made by affidavit by the person accomplishing the posting or mailing or personal service and shall be filed with the Court at or prior to the time fixed for hearing. An interested person may waive notice or any other requirement for the mailing on receipt of instrument by a writing signed by him/her or his/her attorney and filed in the proceeding. [TCR 03-192]

14-107 Renunciation of inheritance. Any person who is an heir, devisee, legatee, or beneficiary under a testamentary instrument or under the laws of intestate succession may renounce in whole or in part his/her inheritance or interest by filing with the Court written instrument verified under oath at any time prior to the entry of a decree of distribution. Upon such proper renouncement, the interest renounced passes as if the person renouncing it predeceased the decedent. [TCR 03-192]

14-108 Effect of divorce, annulment, or decree of separation. Any person who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless by virtue of a subsequent marriage he/she is married to the decedent at the time of death. A decree of separation which does not terminate the marital status of husband and wife shall not be considered a divorce for inheritance purposes. [TCR 03-192]

14-109 Effect of fraud and evasion. Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this Title 14 or if fraud is used to void or circumvent the provisions or purposes of this Title 14, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud or restitution from any person (other than a bona fide purchaser) benefiting from the fraud, whether innocent or not. Any proceeding must be commenced within two years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than five years after the time of commission of the fraud. This Section has no bearing on remedies relating to fraud practiced on a decedent during his/her lifetime which affects the succession of his/her estate. [TCR 03-192]

14-110 Disqualification of a willful slayer. Any surviving spouse, heir, devisee, surviving joint tenant, beneficiary of a bond, life insurance policy, or other testamentary device who criminally and intentionally kills the decedent is not entitled to any benefit under a will or under this Title 14 or any other law of the Winnebago Tribe of Nebraska regarding decedent's estate, and the estate of such decedent will pass as if the killer had predeceased the decedent. A final judgment of conviction of an offense containing the elements of criminal intentional killing is conclusive for the purpose of this Section. In the

absence of a conviction, the Court may determine by a preponderance of the evidence whether the killing was criminal and intentional for purposes of this Section. [TCR 03-192]

14-111 Petition for appointment of administrator or executor. Whenever a member of the Winnebago Tribe dies with or without a will leaving property on the reservation which is subject to the jurisdiction of the Winnebago Tribal Court, any person claiming to be an heir of the decedent or a creditor of the decedent may petition the Court for appointment of an administrator or executor of the decedent and for admission for probate of any instrument purporting to be the last will and testament of the decedent and for distribution of the property. The petition shall state the names and last known addresses of all persons known to the petitioner who may be heirs, devisees, or legatees of the decedent; shall request that a hearing date be fixed on the question of appointment of an administrator or executor of the estate; shall request that notice to creditors be given; shall establish the interest of the petitioner in the estate; shall submit with the petition the purported instrument alleged to be the last will and testament of the deceased, and shall request that notice of hearing be given. Upon the request of such petition, the Court shall fix a time and place for hearing and shall order that persons named in the petition be given notice as provided by this Title 14. [TCR 03-192]

14-112 Priorities of appointment. The following persons, legally competent, shall be afforded priority in order of their listing for appointment as administrator or executor:

1. Any person nominated in the last will and testament of the deceased.
2. The surviving spouse.
3. Children in descending order of age.
4. Other blood relatives in the order of their closeness of relationship.
5. Any other Tribal member who is a creditor of the deceased.
6. Any other Tribal member. [TCR 03-192]

14-113 Duties of administrator or executor. The duties of the administrator or executor shall be to take possession of all property of the deceased subject to this Title 14 and within one month after his/her appointment make an inventory and appraisal of such property and file the original with the Court and mail copies thereof to all persons named in the petition. Such administrator or executor shall within sixty days investigate and attempt to determine and file with the Court a report listing all of the known relatives of the decedent and heirs and devisees who, in the opinion of the executor or administrator, are entitled to distribution of the decedent's estate. The executor or administrator shall give notice to creditors as provided elsewhere in this Title 14, and upon completion of the notice to creditors, shall report to the Court on the amount and nature of each creditor's claim and recommend to the Court with reference to each claim whether or not the same should be allowed and paid. The executor or administrator shall prosecute and defend all actions by and against the estate and shall have the authority to institute actions for the purpose of recovering assets of the decedent's estate. In addition, the executor or administrator shall submit accountings to the Court in accordance with this Title 14, and upon the completion of his/her duties shall distribute the estate in accordance with any order of the Court. The executor or administrator shall file a bond in an amount set by the Court to insure his/her faithful and honest performance of his/her duties as administrator with such sureties as the Court may require. Said bond may be waived by the Court with the consent of the persons entitled to distribution of the decedent's estate or if waived by the decedent's will. [TCR 03-192]

14-114 Oath and letters of appointment. Upon his/her appointment as administrator or executor, the person appointed shall take an oath subscribed to the affect that he/she will faithfully and honestly perform the duties of the administrator or executor. Upon the taking of such oath and filing of the bond, if any, the administrator or executor shall be granted letters of administration or letters of testamentary as proof of his/her appointment. [TCR 03-192]

14-115 Notice to creditors. The administrator or executor of the estate shall cause notice to creditors to be posted in at least three conspicuous places on the reservation at the places designated by the Tribal Court. Said notice shall state that an administrator or executor has been appointed for the estate of the decedent and that any person claiming to be a creditor of the decedent shall have ninety (90) days from the date of the first posting of said notice to present their claim to the clerk of the Tribal Court and that only those claims which are timely presented shall be paid by the estate. Notice by mailing as otherwise provided by this Title 14 shall also be given to any creditor actually known to be such by the administrator or executor. No creditor who holds a security interest in any asset of the decedent's estate shall be required to file a claim in order to be paid. [TCR 03-192]

14-116 Priority of payment of demands against the estate. Where any lien for any demand or claim exists by virtue of a mortgage, pledge, attachment, judgment or execution levy, such lien shall have preference according to its priority to the extent of such demand on any specific property upon which such lien shall have attached. Otherwise, all demands against the estate of any deceased person must be paid in the following order:

1. The expenses of administration;
2. Funeral expenses including the reasonable cost of a burial lot and a reasonable sum for the marker on the grave;
3. The expenses of last illness;
4. Tribal loans;
5. Any debt that may be due by the decedent personally to servants and employees for services rendered within sixty (60) days preceding the decedent's death;
6. Debts having preference by the laws of the United States;
7. All other claims.

If the estate is insufficient to pay all of the debts of any one class, each creditor must be paid pro-rata in proportion to his/her claim, and no creditor of any class shall receive any payment until all of those of the preceding class are paid in full. If the executor or administrator disputes the amount or validity of any claim filed against the estate, he/she shall report the same to the Court who shall fix a time and place for hearing on the validity of such claim, and notice as provided by this Title 14 shall be given to the creditor or claimant. At the time and place fixed for such hearing, the Court shall determine the extent and validity of the claim and shall enter an appropriate order, either allowing or discarding said claim. [TCR 03-192]

14-117 Distribution of property if no taker. If there is no person available to take all or any portion of the decedent's estate, then the property shall pass to the Winnebago Tribe of Nebraska. [TCR 03-192]

14-118 Restrictions on interests.

1. Pursuant to the Indian Land Consolidation Act (25 U.S.C.S., section 2205), non-members of the Tribe or non-Indians shall not be entitled to receive by devise or descent any interest in trust or restricted lands within that Tribe's reservation or otherwise subject to that Tribe's jurisdiction; provided that:
    a. If an Indian dies intestate, the surviving non-Indian or non-member spouse and/or children may elect to receive a life estate in as much of the trust or restricted lands as such person or persons would have been entitled to take in the absence of such restriction eligibility for inheritance and the remainder shall vest in the Indians or Tribal members who would have been heirs in the absence of a qualified person taking a life estate;

b. If an intestate Indian descendent has no heir to whom interests in trust or restricted lands may pass, such interests shall escheat to the Tribe, subject to any non-Indian or non-member spouse and/or children's fights as described in paragraph (1) of this Section;

c. If an Indian decedent has devised interests in trust or restricted lands to persons who are ineligible for such an inheritance by reason of a Tribal ordinance enacted pursuant to this Section, the devise shall be voided only if, while the estate is pending before the Secretary for probate, the Tribe acquires such interests by paying to the Secretary, on behalf of the devisees, the fair market value of such interests as determined by the Secretary as of the date of the decedent's death; provided, that any non-Indian or non-member spouse and/or children of such decedent who have been devised such interests may retain, at their option, a life estate is such interests. Any eligible devisee shall also have the right to renounce his/her devise in favor of a person or persons who are eligible to inherit.

2. The right to receive a life estate under the provisions of this Section shall be limited to:

a. A spouse and/or children who, if they had been eligible, would have inherited an ownership interest of 10 per centum or more in the tract of land, provided that the Tribe acquires such interests which are less than 10 per centum in the tract of land by paying to the Secretary, on behalf of the devisees, the fair market value of such interests as determined by the Secretary as of the date of the decedent's death; or

b. A spouse and/or children who occupied the tract as a home at the time of decedent's death. [TCR 03-192]

14-119 Status of heirs. No person is disqualified to take as an heir because he/she or any person through whom he/she claims is not a member of the Winnebago Tribe of Nebraska or because he/she does not live on the reservation. [TCR 03-192]

14-120 Debts owed to the decedent. No debt owed to the decedent is charged against the share of any person except the debtor. [TCR 03-192]

14-121 Reopening of estates. Any estate may be reopened whenever necessary to dispose of decedent's property discovered after the estate has been closed or to make other necessary corrections. [TCR 03-192]

14-122 Rule of interpretation. In any question arising under the provisions of this Title 14 the Tribal Court shall apply the general principles of probate as annunciated in the statutory rules of the State of Nebraska except where such rules conflict with specific enactments of this Title 14 or other enactments of the Tribal Code. [TCR 03-192]

14-123 Construction. This Title 14 shall be liberally construed and applied so as to do substantial justice. [TCR 03-192]

14-124 Severability. If any provisions of this Title 14 or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Title 14 which can be given effect without the invalid provision or application, and to this end the provisions of this Title 14 are declared to be severable. [TCR 03-192]

14-125 Citation. This Title 14 shall be known as the Winnebago Tribe of Nebraska Probate Code. [TCR 03-192]

14-126 Who may make a will. Any person eighteen or more years of age who is of sound mind may make a will. [TCR 03-192]

14-127 Execution. Except as provided for holographic wills, every will shall be in writing signed by the testator or in the testator's name by some other person in the testator's presence and by his/her direction, and shall be signed by at least two persons each of whom witnessed either the signing or the testator's acknowledgment of the signature or of the will. [TCR 03-192]

14-128 Holographic will. A will which does not comply with the next preceding section is valid as a holographic will, whether or not witnessed, if the signature and the material provisions are in the handwriting of the testator. [TCR 03-192]

14-129 Self-proved will. An attested will may, at the time of its execution or at any subsequent date, be made self-proved, by the acknowledgement thereof by the testator and the affidavits of the witnesses, each made before a notary public or Tribal judge and evidenced by the notary or judge's certificate under official seal, attached or annexed to the will in form and content substantially as follows: Forms for self-proved wills shall be provided at the Tribal Court. [TCR 03-192]

THE STATE OF_____

COUNTY OF_____

WE,_____

AND_____

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

_____
Testator

_____
Witness

_____
Witness

Subscribed, sworn to and acknowledged before me by_____ the testator, and subscribed and sworn to me before me by_____ and_____, witnesses, this ____day of_____, 20__.

_____
Signed

_____
Title

14-130 Who may witness.

1. Any person generally competent to be a witness may act as a witness to a will.
2. A will or any provision thereof is not invalid because the will is signed by an interested witness. [TCR 03-192]

14-131 Choice of law as to execution. A written will is valid if executed in compliance with this Probate Code or if its execution complies with the law at the time of execution of the place where the will is executed, or of the law of the place where at the time of execution or at the time of death the testator is domiciled or has a place of abode. [TCR 03-192]

14-132 Revocation by writing or by act a will or any part thereof is revoked.

1. By a subsequent will which revokes the prior will in whole or in part expressly or by inconsistency; or
2. By being burned, torn, canceled, obliterated, or destroyed with the intent and for the purpose in his/her presence and by his/her direction. [TCR 03-192]

14-133 Revocation by divorce; no revocation by other changes of circumstances. If, after executing a will, the testator is divorced or has his/her marriage annulled, the divorce or annulment revokes any disposition or appointment of property made by the will to the former spouse, any provision conferring a general or special power of appointment on the former spouse and any nomination of the former spouse as executor, trustee, conservator, or guardian, unless the will expressly provides otherwise. Property prevented from passing to a former spouse because of revocation by divorce or annulment passes as if the former spouse failed to survive the decedent, and other provisions conferring some power or office on the former spouse are interpreted as if the spouse failed to survive the decedent. If provisions are revoked solely by this Section, they are revived by testator's remarriage to the former spouse. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this Section. No change of circumstances other than as described in this Section revokes a will. [TCR 03-192]

14-134 Revival of revoked will.

1. If a second will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked, the first will is revoked in whole or in part unless it is evident from the circumstances of the revocation of the second will or from testator's contemporary or subsequent declarations that he/she intended the first will to take effect as executed.
2. If a second will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked by a third will, the first will is revoked in whole or in part except to the extent it appears from the terms of the third will that the testator intended the first will to take effect. [TCR 03-192]

14-135 Incorporation by reference. Any writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification. [TCR 03-192]

14-136 Events of independent significance. A will may dispose of property by reference to acts and events which have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of a will of another person is such an event. [TCR 03-192]

14-137 Requirement that devisee survive testator by one hundred hours. A devisee who does not survive the testator by one hundred (100) hours is treated as if he/she predeceased the testator, unless the will of the decedent contains some language dealing explicitly with simultaneous deaths or deaths in a common disaster, or requiring that the devisee survive the testator or survive the testator for a stated number of days. [TCR 03-192]

14-138 Simultaneous death.

1. Where the title of property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise.
2. Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries, and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived.
3. Where there is no sufficient evidence that two joint tenants by the entirety have died otherwise than simultaneously, the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than two joint tenants and all of them have so died, the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.
4. Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.
5. Those provisions on simultaneous death shall not apply in cases where the decedent has made provision for a different distribution in a will, trust, deed or contract of insurance. [TCR 03-192]

14-139 Rules of construction and intention. The intention of a testator as expressed in his/her will controls the legal effect of his/her dispositions. The rules of construction expressed in the succeeding sections of this Probate Code apply unless a contrary intention is indicated by the will. [TCR 03-192]

14-140 Construction that will passes all property; after-acquired property. A will is construed to pass all property which the testator owns at his/her death, including property acquired after the execution of the will. [TCR 03-192]

14-141 Anti-lapse; deceased devisee; class gifts. If a devisee who is a grandparent or a lineal descendant of a grandparent of the testator is dead at the time of execution of the will, fails to survive the testator, the issue of the deceased devisee who survive the testator by one hundred (100) hours take in place of the deceased devisee, and if they are all of the same degree of kinship to the devisee, they take equally; but if of unequal degree, then those of more remote degree take by representation. One who would have been a devisee under a class gift if he/she had survived the testator is treated as a devisee for purposes of this Section his/her death occurred before or after the execution of the will. [TCR 03-192]

14-142 Failure of testamentary provision.

1. Except as provided in the next proceeding section, if a devisee other than a residuary any reason, it becomes part of the residue.
2. Except as provided in the next proceeding section, if the residue is devised to two or the share of one of the residuary devisees fails for any reason, his/her share passes to the other residuary devisees in proportion to their interests in the residue. [TCR 03-192]

14-143 Exercise of power of appointment. A general residuary clause in a will, or a will making general disposition of all of the testator unless specific reference is made to the power or there is another indication of intention to include the property subject to the power. [TCR 03-192]

14-144 Non-exoneration. A specific devise passes subject to any security interest existing at the time of death, without right of exoneration, regardless of a general directive in the will to pay debts. [TCR 03-192]

14-145 Construction of generic terms to accord with relationship as defined for intestate successions. Half-bloods, adopted persons and persons born out of wedlock are included in a class gift terminology and terms of relationship in accordance with rules for determining relationship for purposes of intestate succession. [TCR 03-192]

14-146 Ademption by satisfaction. Property which a testator gave in his/her lifetime to a person is as a satisfaction of a devise to that person in whole or in part only if the will provides for deduction of the lifetime gift or the testator declares in a contemporaneous writing that the gift is to be deducted from the devise or is in satisfaction of the devise, or the devisee acknowledges in writing that the gift is in satisfaction. For purpose of partial satisfaction, property given during lifetime is valued as of the time the devisee came into possession or enjoyment of the property or as of the time of death of the testator, whichever occurs first. [TCR 03-192]

14-147 Petition for letters testamentary. A petition for letters testamentary may be made by any person having possession of decedent's will. The petition must be made in writing, signed by the petitioner, and shall gate the basis for the Court's jurisdiction, the names of the heirs of the decedent, if known, and the name or names of any person specified in the will as executor and the address of such person if known. The original copy of the will shall be submitted to the Court with the petition. [TCR 03-192]

14-148 Qualification of executor. The Court shall appoint an executor to administer the estate. The executor shall be a competent adult Tribal member and preference shall be given if such person are otherwise qualified, to the person named in the will as such, followed by the surviving spouse or child of the decedent with preference given in descending order of age. [TCR 03-192]

14-149 Appointment of executor.

1 Upon receipt of a petition for letters testamentary, the clerk shall schedule a hearing at which an executor will be appointed and letters testamentary authorized. The hearing shall be scheduled so that adequate notice to interested persons can be made.
2. Notice of the hearing shall be made by the petitioning party to all persons named as takers under the will and to all known heirs of the decedent if different from the named takers, and also by posting notice in a conspicuous place in each of the Tribal office buildings.
3. At the hearing, the Court shall first determine the validity of the decedent's will and then appoint an executor to administer the estate according to the terms of this Probate Code and the decedent's will.
4. Letters testamentary shall be granted to the person appointed as executor upon his/her taking an oath, to be prescribed by the Court, to the effect that he/she will faithfully and honestly administer the estate and upon his/her filing bond, if required. [TCR 03-192]

14-150 Duties of executor; bond. The duties of executor shall be the same as those prescribed in this Probate Code for the administrator of an intestate, and he shall file a bond in a like manner and subject to the same exceptions. [TCR 03-192]

14-151 Creditors. Notice to creditors, determination of the validity of claims and payment of claims shall be handled as prescribed for intestate estates. [TCR 03-192]

14-152 Accounting. Prior payments to the distribution of the estates remaining after payment of all claims and priority payments, the executor shall submit to the Court for approval an accounting of all receipts and disbursements for the estate, showing the present status of the estate and that it is ready for distribution and also showing the computation of any attorney and/or executor's fees involved for which approval for which approval for payment is sought. [TCR 03-192]

14-153 Distribution; closing estate.

1. When it is made to appear to the Court that an estate is ready to be distributed, the Court shall order such distribution according to the provisions of the decedent's will or the rules of intestate succession, whichever is applicable, and according to the rules set forth in this Probate Code.
2. The estate shall be closed and the personal representative of the estate dismissed and his/her bond, if any, released upon filing with the Court receipts showing that the estate is fully distributed and also upon filing with the Court receipts showing that the estate is fully administered and ready to be closed. [TCR 03-192]

14-154 Distribution; order in which assets appropriated; abatement.

1. Except as provided in subsection (2), and except as provided in connection with the share of the surviving spouse who elects to take an elective shares, shares of distributees abate, without any preference or priority as between real or personal property, in the following order: (A) property not disposed of by the will; (B) residuary devises; (C) general devises; (D) specific devises. For purposes of abatement, a general devise charged on any specific property or fund is a specific devise to the extent of the value of the property on which it is charged, and upon the failure or insufficiency. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.
2. If the will expresses an order of abatement, or if the testimony plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in subsection (1), the shares of the distributees abate as may be found necessary to give effect to the intention of testator.
3. If the subject of a preferred devise is sold or used incident to administration, abatement shall be achieved by appropriate adjustments in, or contribution from other interests in the remaining asset. [TCR 03-192]

14-155 Property discovered after estate closed. An estate may be reopened whenever necessary to dispose of a decedent's property discovered after his/her estate has been closed. The Court shall order distribution of the property to the person or persons entitled thereto after making whatever orders appear necessary to assure a just participation of the after-discovered property in the expenses of the estate. [TCR 03-192]

14-156 Personal representative's and attorney's fees.

1. An administrator or executor may receive a fee to be paid from the estate prior to final distribution of the estate, subject to Court approval upon submission of documentation to the Tribal Court reflecting a detailed summary of time spent and a description of duties performed and the dollar amount assigned to the efforts expended.
2. An attorney who represents the personal representative of an estate for purposes of administering the estate may submit to the Tribal Court a fee application consisting of a detailed accounting of hours incurred and the hourly rate charged. [TCR 03-192]

14-157 Homestead allowance. A surviving spouse of a decedent who was domiciled on the reservation is entitled to a homestead allowance of the full market value of the homestead. If there is no surviving spouse, each minor dependent child of a decedent is entitled to a homestead allowance of the full market value of the homestead divided by the number of minor dependent children of the decedent. The homestead allowance is exempt from and has priority over all claims against the estate. The homestead allowance is in addition to any share passing to the surviving spouse or minor dependent child by the will of the decedent unless otherwise provided by intestate succession. [TCR 03-192]

14-158 Exempt property. In addition to the homestead allowance, the surviving spouse of a decedent who was domiciled on the reservation is entitled from the estate to a value not exceeding two thousand five hundred dollars ($2,500.00) in excess of any security interest therein in household furniture, automobiles, furnishings, appliances, and personal effects. If there is not a surviving spouse or child, the decedent are entitled jointly to the same value. If encumbered chattels are selected and if the value in excess of security interest plus that of other exempt property is less than two thousand five hundred dollars ($2,500.00) or if there is not two thousand five hundred dollars ($2,500.00) worth of exempt property in the estate, if any, to the extent necessary to make up the two thousand five hundred dollars ($2,500.00) value, rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, except that the right to any assets to make up a deficiency have priority over all claims against the estate, except that the right to any asset to make up a deficiency of exempt property shall abate as necessary to permit prior payment of homestead allowance and family allowance. These rights in addition to any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided by intestate succession or by way of elective share. [TCR 03-192]

14-159 Family allowance. In addition to the right to the homestead allowance and exempt property, if the decedent was domiciled on the reservation, the surviving spouse and minor children who the decedent was obligated to support and children who were in fact being supported by him/her are entitled to a reasonable amount of money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than one year if the estate is inadequate to discharge allowed claims. The allowance may be paid in a lump sum or in periodic installments. It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children; otherwise, to the children or persons having their care and custody as their needs may appear. The family allowance is exempt from and has priority over all claims except for the homestead allowance. The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided by intestate succession. The death of any person entitled to family allowance terminates his/her right to allowances not yet paid. [TCR 03-192]

14-160 Source, determination and documentation. If the estate is otherwise sufficient, property specifically devised shall not be used to satisfy rights to homestead and exempt property. Subject to this restriction, the surviving spouse, the guardians of the minor children, or children who are adults may select property of the estate as homestead allowance and exempt property. The personal representative may make these selections if the surviving spouse, the children or the guardians of the minor children are unable or fail to do so within a reasonable time or if there are no guardians of the minor children. The personal representative may execute an instrument of deed of distribution to establish the ownership of property taken as homestead allowance or exempt property. He/she may determine the family allowance in a lump sum not exceeding three hundred dollars ($300.00) per month for one year, and may disburse funds of the estate in payment of the family allowance and any part of the homestead allowance payable in cash. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this Section may petition the Court for appropriate relief, which relief may provide a family allowance larger or smaller than that which the personal representative determined or could have determined. [TCR 03-192]

14-161 Applicable law. When a member of the Winnebago Tribe dies without a valid will, the member's property which is subject to the Court's jurisdiction shall descend to the following persons:

1. One half of the interest shall descend to the surviving spouse and the other one-half shall descend in equal shares to the children of the decedent and to the issue of any deceased child of the decedent by right of representation.
2. If there is no surviving spouse, the interest shall descend in equal shares to the children of the decedent and to the issue of any deceased child of the decedent by right of representation.
3. If there is no surviving children or issue of any child, the interest shall descend to the surviving spouse.
4. If there is no surviving spouse and no surviving children or issue of any child, the interest shall descend to the surviving parents or parent of the decedent.
5. If there is no surviving spouse and no surviving children or issue of any child, and no surviving parent, the interest shall descend equally to the brothers and sisters of the decedent.
6. If there is no surviving spouse, no surviving children or issue of any child, no surviving parent, no surviving brothers and sisters, the interest shall descend equally to surviving grandparents.
7. If there is no surviving spouse, no surviving children or issue of any child, no surviving parent, no surviving brothers and sisters and no surviving grandparents, the interest shall descend equally to surviving aunts and uncles.
8. If there is no surviving spouse, no surviving children or issue of any child, no surviving parent, no surviving brothers and sisters and no surviving grandparents and no surviving aunts and uncles, the interest shall descend equally to surviving nieces and nephews.
9. If there is no surviving spouse, no surviving children or issue of any child, no surviving parent, no surviving brothers and sisters and no surviving grandparents and no surviving aunts and uncles, and no surviving nieces and nephews, the interest shall descend equally to surviving cousins of the first degree.
10. A child may not inherit by intestate succession from or through a parent whose parental rights with respect to said child have been terminated pursuant to lawful authority and a parent may not inherit by intestate succession from or through a child with respect to which such parent's parental rights have been terminated. [TCR 03-192]

the Court. Such notice shall include a copy of the Court's order determining whether the Decedent died testate or Intestate.

b. If the Personal Representative does not otherwise give notice to creditors under Section 14.112 within sixty (60) days after appointment, the Personal Representative shall cause written notice of his/her appointment and the pendency of the Probate proceedings to be mailed to the State of Nebraska's Department of Health and Human Services, and proof of the mailing shall be made by affidavit and filed with the Court.

7. **Cancellation of Letter of Direction**. The Court appointing any Personal Representative shall have authority for any cause deemed sufficient, to cancel and annul such assignment and appoint another Personal Representative in place of those removed. If after a letter of direction is granted, a will of the deceased is found and Probate thereof is granted, the letter may be revoked or amended according to the will.

8. **Successor of a Personal Representative**. If a Personal Representative of an Estate dies or resigns or the letter of direction is revoked before the settlement of the Estate, a successor letter of direction shall be granted to a person to whom the letters would have been granted if the original letter had not been obtained from the Court, and the successor Personal Representative shall perform like duties and incur like liabilities as the preceding Personal Representative, unless the Decedent provided otherwise in a duly Probated will or unless the Court orders otherwise.

9. **Inventory and Appraisement, Filing with the Court**.

a. Within three months after appointment, unless the Court provides longer, the Personal Representative shall make and verify by affidavit a true inventory and appraisement of all of the property of the Estate passing under the will or by the laws of intestacy and which shall have come to the Personal Representative's possession or knowledge, including a statement of all encumbrances, liens, or other secured charges against any item. The Personal Representative shall determine the fair net value, as of the date of the Decedent's death, of each item contained in the inventory after deducting the encumbrances, liens and other secured charges on the item. Such property shall be classified as follows:

i. Real property, by legal description.
ii. Stocks and bonds.
iii. Mortgages, notes, and other written evidences of debt.
iv. Bank accounts and money.
v. Furniture and household goods.
vi. All other Personal Property accurately identified including the Decedent's non-Probate assets and proportionate share in any partnership, but no inventory of the partnership property shall be required of the Personal Representative.

b. The inventory and appraisement shall be filed with the Tribal Court and notice of its filing shall be served on any heir, legatee, Devisee, unpaid creditor who has filed a claim or beneficiary of a non-Probate asset.

c. The Personal Representative shall have the duty to amend the inventory and appraisal within thirty (30) days of acquiring knowledge of any additional property of the Estate. Notice of the amendment shall be served as notice of the original inventory was served.

10. **Personal Representative Reports to the Court**.

a. The Personal Representative shall make, verify by his/her oath, and file with the clerk of the Court reports outlining the affairs of the Estate at least annually, and more frequently if necessary or if required by the Court. Such report(s) shall contain:

i. A statement of the claims against the Estate filed and allowed and all those rejected.

ii. A statement whether it is necessary to sell, mortgage, lease or exchange any property for the purpose of paying debts or settling any obligations against the Estate or expenses of administration or allowance to the family, he/she may in such report set out the facts showing such necessity and ask for such sale, mortgage, lease or exchange.

iii. A statement of the amount of property real and personal, which has come into his/her hands, and give a detailed statement of all sums collected by him/her, and of all sums paid out, and it shall state such other things and matters as may be proper or necessary to give the Court full information regarding any transactions by him done or which should be done.

b. The Personal Representative will provide notice, in person or by mail, to all Heirs at law, Legatees, Devisees, and claimants against the Estate of the filing of the report. The Court will provide notice to the same group of people of the hearing on the report.

11. **Final Report of the Personal Representative**. When the Estate is ready to be closed, the Personal Representative shall make, verify and file with the Court his final report and petition for distribution. Such final report and petition shall, among other things, show that the Estate is ready to be settled and shall show any moneys collected since the previous report, and any property which may have come into the hands of the Personal Representative since his/her previous report, any debts paid, and the general condition of the Estate at the time. It shall also include the names and addresses to the best possible extent of all the Legatees and Devisees in the event there shall have been a will, and the names and addresses as nearly as may be, of all the Heirs who may be entitled to share in such Estate, and shall give a particular description of all the property of the Estate remaining undisposed of, and shall set out such other matters as may tend to inform the Court of the condition of the Estate, and it may ask the Court for settlement of the Estate and for distribution of the property and the discharge of the Personal Representative. If the Personal Representative has been discharged without having legally closed the Estate, without having legally obtained an adjudication as to the Heirs, or without having legally procured a decree of distribution or final settlement, the Court may in its discretion upon petition of any person interested, cause all such steps to be taken in such Estate as were omitted or defective.

12. **Scheduling Hearing on Final Report and Petition for Distribution**. When a final report and petition for distribution has been filed, the Court shall fix a day for hearing in which must be at least fourteen days after the report is filed. The Personal Representative shall, not less than fourteen days before the hearing, mail a copy of the notice of the time and place fixed for the hearing to each heir, Legatee, Devisee and distribute whose name and address are known to him/her, and proof of such mailing shall be made by affidavit and filed at or before the hearing with the Court.

13. **Hearing on Final Report, Decree on Distribution**. Any person interested may file objections to the final report and petition for distribution, or may appear at the hearing and present his/her objections then. The Court may take such testimony it deems proper or necessary to determine whether the Estate is ready to be settled, and whether the transactions of the Personal Representative shall be approved, and to determine who are the Legatees or Heirs or persons entitled to have the property distributed to them.

a. The Court shall, if it approves such report and finds the Estate ready to be closed, enter a decree approving such report, find and adjudge the persons entitled to the remainder of the Estate, and that all debts have been paid and by such decree shall distribute the real and Personal Property to those entitled to it.

b. Upon the production of receipts from the beneficiaries or distributes for their portions of the Estate, the Court shall, if satisfied with the correctness thereof, adjudge the Estate closed and discharge the Personal Representative. The Court may upon such final hearing partition among the person entitled thereto the Estate held in common and undivided and designate and distribute their respective shares; or assign the whole or any part of said Estate to one or more of the persons entitled to share therein. The person or persons to who said Estate is assigned shall pay or secure to the other parties interested in said Estate their just proportion of the value thereof as determined by the Court from the appraisement, or from any other evidence which the Court may require.

c. If it appears to the Court at or prior to any final hearing that the Estate cannot be fairly divided, then the whole or any part of said Estate may be sold or mortgaged by the Personal Representative and the proceeds thereof distributed to the persons entitled thereto as provided in the final decree.

d. The Court shall have the authority to make partition, distribution and settlement of all Estates in any manner which to the Court seems right and proper, to the end that such Estates may be administered and distributed to the persons entitled thereto. No Estate shall be partitioned, nor sold where partition is impracticable, except upon a hearing before the Court. The Court shall fix the values of the several pieces or parcels to be partitioned at the time of making such order of partition or sale, and may order the property sold and the proceeds distributed, or may order partition and distribute the several pieces or parcels subject to such charges or burdens as such be proper and equitable.

14. **Distributions to Minors**. When a decree or distribution of an Estate or interest is to a person under the age of eighteen (18) years, it shall be required that:

a. The money is deposited in a bank or trust company or be invested in an account in an insured financial institution for the benefit of the Minor subject to withdrawal only upon the order of the Court in the original Probate proceeding, or upon said Minor's attaining the age of eighteen (18) years and furnishing proof thereof; or

b. A guardian shall be appointed and the money or property shall be paid or delivered to such guardian prior to the discharge of the Personal Representative in the original Probate proceeding.

15. **Distribution of Property if no taker**. If there is no person available to take all or any portion of the Decedent's Estate, then the property shall pass to the Winnebago Tribe of Nebraska.

16. **Debts owed to Decedent**. No debt owed to the Decedent is charged against the share of any person except the debtor.

17. **Letters of Direction after Final Distribution and Settlement**. Should other property of the Estate be discovered, or for any other reason necessary, the Court may issue subsequent letters of direction if needed.

18. **Personal Representative Expense Reconciliation**. The Personal Representative shall produce receipts and/or cancelled checks for the expenses and charges associated for any and all expenses and charges which he/she shall have paid in conjunction with duties in settling the Estate. All receipts shall be filed and remain with the Court until the completion of Probate and the Personal Representative has been discharged. [TCR 14-124]

14-112 Claims Against the Estate.

1. **Notice to Creditors**. The Personal Representative shall give notice to creditors of the Decedent, announcing the Personal Representative's appointment and requiring that person's having claims against the Decedent present their claims within sixty (60) days from the notice or be forever barred as to claims against the Decedent's Probate and non-Probate assets. The Personal Representative shall file with the Court proof by affidavit of the giving and publication of the notice.
   a. The Personal Representative shall first file the original notice with the Court.
   b. The Personal Representative shall cause a notice to be published once each week for three successive weeks in a newspaper of general distribution serving the Winnebago Tribal Reservation and Winnebago Nebraska.
   c. The Personal Representative shall also mail a copy of the notice, including the Decedent's social security number to the State of Nebraska's Department of Health and Human Services.

2. **Claims, Proper Format and Manner of Presentment.**
   a. The claimant, or attorney, or agent shall sign the claim and include the following information:
      i. The name and address of the claimant.
      ii. The name, address, if different from that claimant, and nature of authority of an agent signing the claim on behalf of the claimant.
      iii. A statement of the facts or circumstances constituting the basis of the claim; attaching any documents evidencing the claim.
      iv. The amount of the claim.
      v. If the claim is secured, unliquidated, contingent, or not yet due, the nature of the security, the nature of the uncertainty, or the date when it will become due.
   b. The claim does not need to be supported by an affidavit.
   c. The claim must be presented within sixty (60) days of the date of first publication of the notice in Section 14-112.1 or it is barred without exception by:
      i. Serving on or mailing to, by regular first class mail, the Personal Representative or the Personal Representative's attorney a copy of the signed claim; and
      ii. Filing the original of the signed claim with the Court.
   d. A claim will be deemed presented upon the later of the date of postmark or service on the Personal Representative or the Personal Representative's attorney, and filing with the Court.

3. **Priority of Claims against the Estate**.
   a. Where any lien, demand or claim exists by virtue of a mortgage, pledge, attachment, judgment or execution levy; such lien shall have preference according to its priority to the extent of such demand on any specific property upon which such lien shall have attached. Otherwise, all demands against the Estate of any deceased person must be paid in the following order:
      i. The expenses of administration.
      ii. Funeral expenses including the reasonable cost of a burial lot and a reasonable sum for the marker on the grave.
      iii. The expenses of last illness.
      iv. Tribal loans.
      v. Any debt that may be due by the Decedent personally to servants and employees for services rendered within sixty days preceding the Decedent's death.
      vi. Debts having preference by the laws of the United States.

vii. All other claims.

a. If the Estate is insufficient to pay all of the debts of any one class, each creditor must be paid pro-rata in proportion to his/her claim, and no creditor of any class shall receive any payment until all of those of the preceding class are paid in full. If the Personal Representative disputes the amount or validity of any claim filed against the Estate, he/she shall report the same to the Court who shall fix a time and place for hearing on the validity of such claim, and notice as provided by this Title 14 shall be given to the creditor or claimant. At the time and place fixed for such hearing, the Court shall determine the extent and validity of the claim and shall enter an appropriate order, either allowing or discarding said claim.

4. **Homestead Allowance.** A surviving spouse of a Decedent who was domiciled on the Reservation is entitled to a homestead allowance of ($15,000.00) fifteen thousand dollars. If there is no surviving spouse, each minor child and each dependent child of the Decedent is entitled to a homestead allowance amounting to fifteen thousand dollars ($15,000.00) divided by the number of minor and dependent children of the Decedent. The homestead allowance is exempt from and has priority over all claims against the Estate except for costs and expenses of administration. The homestead allowance is in addition to any share passing to the surviving spouse or minor or dependent child by the will of the Decedent unless otherwise provided therein, by Intestate succession or by way of elective share.

5. **Exempt Property.**

a. In addition to the homestead allowance, the surviving spouse of a Decedent who was domiciled on the Reservation is entitled from the Estate to value not exceeding ten thousand dollars ($10,000.00) in excess of any security interests therein in household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse, children of the Decedent are entitled jointly to the same value unless the Decedent has provided in his or her will that one or more of such children shall be disinherited, in which case only those children not so disinherited shall be so entitled. For purposes of this Section, disinherited means providing in one's will that a child shall take nothing or a nominal amount of ten dollars or less from the Estate.

b. If encumbered chattels are selected and if the value of excess of security interests, plus that of other exempt property, is less than ten thousand dollars ($10,000.00), or if there is not ten thousand dollars ($10,000.00) worth of exempt property in the Estate, the surviving spouse and children are entitled to other assets of the Estate, if any, to the extent necessary to make up the ten thousand dollars ($10,000.00) value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the Estate except for costs and expenses of administration, and except that the right to any assets to make up a deficiency of exempt property shall abate as necessary to permit prior payment of a homestead and family allowance.

c. These rights are in addition to any benefit or share passing to the surviving spouse by the will of the Decedent unless otherwise provided therein, by intestate succession, or by way of elective share. These rights are in addition to any benefit or share passing to the surviving children by intestate succession and are in addition to any benefit or share passing by the will of Decedent to those surviving children not disinherited unless otherwise provided in the will.

6. **Family Allowance.** In addition to the right to homestead allowance and exempt property, if the Decedent was domiciled on the Reservation, the surviving spouse and the minor or dependent children whom the Decedent was obligated to support and such children were in fact being

supported by the Decedent are entitled to a reasonable allowance in money out of the Estate for their maintenance during the period of administration, which allowance may not continue for longer than one year if the Estate is inadequate to discharge allowed claims.

a. The allowance may be paid as a lump sum or in periodic installments. It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children; otherwise to the children, or persons having their care and custody; but in case any minor child or dependent child is not living with the surviving spouse, the allowance may be made partially to the child or his guardian or other person having his care and custody, and partially to the spouse, as their needs may appear.

b. The family allowance is exempt from and has priority over all claims except for costs and expenses of administration and the homestead allowance. The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the Decedent unless otherwise provided, therein, by intestate succession, or by way of elective share.

c. The death of any person entitled to family allowance, other than the surviving spouse, terminates his right to allowances not yet paid.

7. **Exempt Estates.** An Estate having an appraised value which does not exceed $7,500.00 (seven thousand five hundred dollars) and which is to be inherited by a surviving spouse and/or minor children of the Decedent shall be exempt from the claims of all general creditors and the probate thereof may be summarily concluded as provided in this Section.

a. Notice of Hearing to Determine Whether Estate is Exempt Estate. Upon petition of the Personal Representative, the Court shall enter an order stating that it appears, from the appraised value of the whole Estate that it does not exceed $7,500.00 (seven thousand five hundred dollars) and that such Estate is to be inherited by the surviving spouse and/or minor children of the Decedent and shall set a date and hour for hearing objections of and interested persons, if any there be, why the whole Estate should not be declared to be exempt from the claims of all general creditors and distributed to the surviving spouse and/or minor children of the Decedent. Notice of such hearing shall be given to all persons known to the Personal Representative to be an heir, devisee, legatee or creditor of the Decedent, in accordance with this Title.

b. Hearing to Determine Whether the Estate is an Exempt Estate. If, upon such hearing, the Court finds that such Estate is an exempt Estate, the Court shall enter an order directing the Personal Representative to distribute such Estate to the surviving spouse and/or the minor children of the Decedent as set forth in the order and provide that no further proceedings are necessary and that, upon distributing the distributive share or shares of such Estate to those entitled thereto and filing receipts therefore, the Estate shall be closed. [TCR 14-124]

14-113 Will Contests.

1. **Contests of Probate Limitations on Actions and Issues**. Any person who wishes to contest the validity of, or reject any or all of a will, shall petition the Tribal Court within one-hundred twenty (120) days immediately following the notice of approval or rejection of a will.

a. The petition shall contain his/her objections and exceptions to the will. Issues addressing the competency of the deceased and his/her ability to make a last will and testament, or respecting the execution by the deceased of the last will and testament under restraint or undue influence or fraudulent representations, or for any other cause affecting the validity of the will or a part of it shall be tried and determined by the Court.

b. If no person raises such objections within the one-hundred twenty days (120) days stated above, the approval of the Probate or rejection of such shall be binding and final.

2. **Notice of Contest**. Upon filing a contest, a notice shall be issued to the Personal Representative of the Decedent's Estate, and to all Heirs at law, Legatees named in the will, or to their guardians if any of them are Minors, or their Personal Representatives if any of them are dead, requiring them to appear before the Court, on a day therein specified, to show cause why the petition should not be granted.

3. **Burden of Proof**. In any will contest proceedings, the burden of proof shall rest upon the person contesting the Court's previous order. The Court's previous order shall stand unless the person contesting it provides clear and convincing evidence to the contrary.

4. **Court orders following Hearing on Contest**. If a Court finds that a petitioner has proven with clear and convincing evidence that the previous order of the Court accepting or rejecting a will in whole or in part or a finding that the Decedent died Intestate was in error, the Court shall issue a new order reflecting the evidentiary findings made following the contest proceedings. The new order may accept or reject a will, in whole or in part, may find that the Decedent dies Intestate, and may amend the letters of appointment of the Personal Representative for the Estate.

5. **Costs**. In a contest proceeding, assessment of costs shall be in the discretion of the Court. If the contestant is not successful, the Court may assess the costs against the contestant, including, unless it appears that the contestant acted with probable cause and in good faith, such reasonable attorney fees as the Court may deem proper. [TCR 14-124]

14-114 Abatement.

1. Except as provided in subsection 14-114.2, shares of distributees abate, without any preference or priority as between Non-Trust and Non-Restricted Real Property or Personal Property, in the following order:
   a. Property not disposed of by the will.
   b. Residuary devises.
   c. General devises.
   d. Specific devises.

   For purposes of abatement, a general devise charged on any specific property or fund is a specific devise to the extent of the value of the property on which it is charged, and upon the failure or insufficiency. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.

2. If the will expresses an order of abatement, or if the testimony plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in Section 14-114.1, the shares of the distributees abate as may be found necessary to give effect to the intention of testator.

3. If the subject of a preferred devise is sold or used incident to administration, abatement shall be achieved by appropriate adjustments in, or contribution from other interests in the remaining asset. [TCR 14-124]

14-115 Disqualification of a Willful Slayer. Any surviving spouse, heir, Devisee, surviving joint tenant, beneficiary of a bond, life insurance policy, or other testamentary devise who is found criminally responsible for the death of the Decedent is not entitled to any benefit under a will or under this Title 14

or any other law of the Winnebago Tribe of Nebraska regarding Decedent's Estate, and the Estate of such Decedent will pass as if the killer had predeceased the Decedent. A final judgment of conviction of an offense containing the elements of criminal intentional killing is conclusive for the purpose of this Section. [TCR 14-124]

14-116 Waiver of Right to Elect and of Other Rights.

1. The right of election of a surviving spouse and the right of the surviving spouse to a homestead allowance, exempt property, and family allowance, or any of them, may be waived wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by the surviving spouse.
2. A surviving spouse's waiver is not enforceable if the surviving spouse proves that:
   a. he or she did not execute the waiver voluntarily;
   b. the waiver was unconscionable when it was executed and, before execution of the waiver, he or she:
      i. was not provided a fair and reasonable disclosure of the property or financial obligations of the Decedent;
      ii. did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the Decedent.

3. The issue of unconscionability of a waiver is for decision by the Winnebago Tribal Court as a matter of law.
4. Unless it provides to the contrary, a waiver of "all rights," or equivalent language, in the property or Estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation, divorce, or annulment is a waiver of all rights to elective share, homestead allowance, exempt property, and family allowance by each spouse in the property of the other and a renunciation by each of all benefits that would otherwise pass to him or her from the other by intestate succession or by virtue of any will executed before the waiver or property settlement. [TCR 14-124]

14-117 General Provisions.

1. **Effective Date.** After duly approved by the Tribal Council this Title shall be forwarded to the Secretary for approval. This Title shall become effective one-hundred eighty (180) days after the date it is approved by the Secretary.

2. **Severability.** If any section, clause, or provision of this Code, or its application to any person or circumstance is declared invalid for any reason by a Court of competent jurisdiction, the remaining provisions of the Code or application to any other person or circumstance shall still be valid and in effect. [TCR 14-124]

TITLE 15
UTILITIES
(As adopted by Resolution #07-53, March 6, 2007)

SUMMARY OF CONTENTS

SECTION	ARTICLE-PAGE
1. TABLE OF REVISIONS	ii
2. TABLE OF CONTENTS	iii
3. ARTICLE 1: LEGISLATIVE FINDINGS AND PURPOSE	1-1
4. ARTICLE 2: GENERAL PROVISIONS	2-1
5. ARTICLE 3: WINNEBAGO TRIBAL UTILITY BOARD; REGULATORY	3-1
6. ARTICLE 4: PUBLIC UTILITIES: RESPONSIBILITIES, DUTIES, REQUIREMENTS	4-1
7. ARTICLE 5: ELECTRIC UTILITY SERVICE ON WINNEBAGO RESERVATION	5-1
8. ARTICLE 6: TELECOMMUNICATIONS SERVICE [Reserved]	6-1
9. ARTICLE 7: WATER SERVICE [Reserved]	7-1
10. ARTICLE 8: WASTEWATER SERVICE [Reserved]	8-1
11. ARTICE 9: GAS UTILITIES [Reserved]	9-1
12. ARTICLE 10: HEATING UTILITIES [Reserved]	10-1
13. ARTICLE 11: OTHER UTILITIES [Reserved]	11--1
14. ARTICLE 12: TRIBAL UTILITY BOARD – ENTERPRISE [Reserved]	12-1

TITLE 15
TABLE OF REVISIONS

The following table is included in this title as a guide for determining whether each article properly reflects the current version. This table will be updated with the revision of each article.

Through usage and supplementation, pages in bound titles can be inserted and removed when sections are revised on an article-by-article basis. This table should be placed before the Table of Contents in the title.

The "Article" column lists each article, and the "Section" column lists any corresponding sections that have been revised, in sequence. The "Revised Date" column reflects the effective date of the revision (e.g., "6/20/15"). If an article is not listed in the table, it has not been revised since the December 2015 Winnebago Tribal Code update and distribution.

Article	**Section**	**Revised Date**

TITLE 15
UTILITIES
(As adopted by Resolution #07-53, March 6, 2007)

ARTICLE 1
LEGISLATIVE FINDINGS AND PURPOSE

15-101 Sovereign Power to Regulate.
15-102 Critical Need for Utility Regulation on Reservation.
15-103 Demonstrably Serious Impacts of Utility Activities upon Economic Security, Health and Welfare of the Winnebago Tribe of Nebraska and Winnebago Tribal Members.
15-104 State Jurisdiction and Regulation Not Applicable within Winnebago Reservation.
15-105 Finding of Consensual Relations between Utilities Operating Within Reservation and the Tribe, Tribal Members and Non-Members of Tribe.
15-106 Illegality of State Tax Collection by Utilities.
15-107 Benefits Provided by Tribal Government to Utilities.
15-108 Purpose.
15-109 Scope of Services to be Regulated.
15-110 Territory, Persons and Property Affected.
15-111 Explicit and implicit Intention for State Law Preemption.

TITLE 15
ARTICLE 2
GENERAL PROVISIONS

15-201 Title and Date.
15-202 Sovereign Immunity.
15-203 Definition of Terms.

TITLE 15
ARTICLE 3
WINNEBAGO TRIBAL UTILITY BOARD; REGULATORY

15-301 Creation of Winnebago Tribal Utility Board.
15-302 Number and Selection of Board Members.
15-303 Terms of Office.
15-304 Board Qualifications.
15-305 Initial Appointment of the Utility Board.
15-306 Vacancies.
15-307 Resignations.
15-308 Removals.
15-309 Officers of the Board and Duties of Officers.
15-310 Compensation.
15-311 Quorum
15-312 Majority Vote.
15-313 General Procedures of the Board.
15-314 Tribal Utility Account Established.
15-315 Jurisdiction of Board.
15-316 Powers and Duties of Board With Respect to Utilities.
15-317 Annual Reports by Utilities.
15-318 Production of Records.
15-319 Investigation.
15-320 Hearings; Examiner.
15-321 Rules of the Board.
15-322 Board Employees and Expenses.

TITLE 15
ARTICLE 4
PUBLIC UTILITIES: RESPONSIBILITIES, DUTIES, REQUIREMENTS

15-401 Duty to Provide Adequate Service.
15-402 Unauthorized Utilities Facilities Prohibited.
15-403 Duty to Produce Information on Reservation Easements.
15-404 Disconnection or Discontinuation of Service.

TITLE 15
ARTICLE 5
ELECTRIC UTILITY SERVICE ON WINNEBAGO RESERVATION

15-501 Assigned Service Areas; Nonexclusive Franchise Requirement.
15-502 Franchise Service Rights; Term of Franchise.
15-503 Interconnection Standards and Obligations.
15-504 Net Metering.
15-505 Energy Conservation & Energy Efficiency.
15-506 Lower Income Programs.
15-507 Environmental Obligations.
15-508 Ownership of Wires and Facilities.
15-109 Valuation of Electric Utility Property. [Reserved]

TITLE 15
ARTICLE 6
TELECOMMUNICATIONS SERVICE
[Reserved]

TITLE 15
ARTICLE 7
WATER SERVICE
[Reserved]

TITLE 15
ARTICLE 8
WASTEWATER SERVICE
[Reserved]

TITLE 15
ARTICLE 9
GAS UTILITIES
[Reserved]

TITLE 15
ARTICLE 10
HEATING UTILITIES
[Reserved]

TITLE 15
ARTICLE 11
OTHER UTILITIES
[Reserved]

TITLE 15
ARTICLE 12
TRIBAL UTILITY BOARD – ENTERPRISE
[Reserved]

TITLE 15
ARTICLE 1
LEGISLATIVE FINDINGS AND PURPOSE

15-101 Sovereign Power to Regulate.
15-102 Critical Need for Utility Regulation on Reservation.
15-103 Demonstrably Serious Impacts of Utility Activities upon Economic Security, Health and Welfare of the Winnebago Tribe of Nebraska and Winnebago Tribal Members.
15-104 State Jurisdiction and Regulation Not Applicable within Winnebago Reservation.
15-105 Finding of Consensual Relations between Utilities Operating Within Reservation and the Tribe, Tribal Members and Non-Members of Tribe.
15-106 Illegality of State Tax Collection by Utilities.
15-107 Benefits Provided by Tribal Government to Utilities.
15-108 Purpose.
15-109 Scope of Services to be Regulated.
15-110 Territory, Persons and Property Affected.
15-111 Explicit and implicit Intention for State Law Preemption.

15-101 Sovereign Power to Regulate. The power to regulate utilities is an inherent and essential part of the authority of any reservation tribal government. The power is therefore an aspect of the retained sovereignty of the Winnebago Tribe of Nebraska except where it has been limited or withdrawn by federal law. Services, rates, policies, procedures and practices of utilities operating within the exterior boundaries of the Winnebago Reservation have a demonstrable impact upon the political integrity, economic security, and health and welfare of the Winnebago Tribe of Nebraska. Tribal regulation of utilities operating within the exterior boundaries of the Winnebago Reservation is an essential government function of the Winnebago Tribe. The Winnebago Tribe of Nebraska is the only sovereign with authority to exercise civil regulatory jurisdiction within the exterior boundaries of the Winnebago Reservation.

The Winnebago Tribe of Nebraska is a sovereign Indian tribe organized under a constitution and bylaws ratified by the Tribe on February 29, 1936, and approved by the Secretary of the Interior on April 3, 1936, pursuant to section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1934 (49 Stat. 378). Pursuant to Article III of the Constitution of the Winnebago Tribe of Nebraska, as amended, the Winnebago Tribal Council is the governing body of the Winnebago Tribe of Nebraska. This Title is enacted pursuant to the inherent sovereign tribal powers expressly delegated to the Tribal Council in Article IV, Section 1, Subsections (g), (i), (o), (q), and (r) of the Tribal Constitution. This Title seeks to establish a structure for the many growing and future utilities-providing entities on the Reservation. [TCR 07-53]

15-102 Critical Need for Utility Regulation on Reservation. As both Indian and non-Indian populations within the boundaries of the Reservation increase, and as additional residential, commercial, government and agricultural activities multiply, the need for adequate utility regulations concomitantly increases. Inasmuch as the Reservation is checker boarded with trust and non-trust land, and as trust land and non-trust land are crisscrossed by utility lines, pipelines, rail lines, and rights-of-way of utilities and entities, the Tribe, tribal members and nonmembers have a critical need for the Tribe to regulate and coordinate all utilities and entities providing utility services within the Reservation. [TCR 07-53]

15-103 Demonstrably Serious Impacts of Utility Activities upon Economic Security, Health and Welfare of the Winnebago Tribe of Nebraska and Winnebago Tribal Members. The rural nature of the Reservation and particular needs of the residents and businesses residing on the Reservation all present a compelling and urgent need for a seamless regulatory structure. Those particular needs stem from the following Reservation characteristics:

1. Many homes of Tribal members, particularly government financed homes, are "all electric," that is, heated solely by electricity;
2. The health and the lives of many elderly and ill Tribal members and non-members are at risk during harsh winter and summer months;
3. The high cost of electricity within the Reservation;
4. The need to minimize and stabilize the high cost of electricity to the Tribe, Tribal members and non-members and to economic enterprises owned by the Tribe and Tribal members;
5. The urgency of minimizing and stabilizing cost of electricity to attract new and expanded investment and business on the Reservation; and
6. The absolute necessity of adequate and reliable electricity for critical medical procedures and treatments received by ill persons on the Reservation.

These reasons, amongst others, all demonstrate the serious impacts of utility services upon the economic security, health, and welfare of the Tribe and Tribal members. [TCR 07-53]

15-104 State Jurisdiction and Regulation Not Applicable within Winnebago Reservation. The State of Nebraska lacks jurisdiction to regulate utilities within the Reservation and any attempted imposition of state regulation of such utilities manifestly interferes with the right of the Tribe and Tribal members to make their own laws and be ruled by them. Moreover, utility regulation is preempted by the Tribe and federal government with respect to all HUD homes of Tribal members, other homes and businesses of Tribal members financed in whole or in part by the Tribe or the federal government, all Tribal buildings, facilities and businesses of the Tribe financed in whole or in part by the Tribe or the federal government or all Bureau of Indian Affairs or other federally owned or operated buildings. [TCR 07-53]

15-105 Finding of Consensual Relations between Utilities Operating Within Reservation and the Tribe, Tribal Members and Non-Members of Tribe. The Council finds that every utility that enters and operates within the Reservation, enters into consensual relations, commercial dealings and contracts with residents of the Reservation, Indian and non-Indian, and with the Tribe, to provide services, operate facilities, construct and erect pipelines, transmission lines, poles, towers, and other improvements upon and across the Reservation lands owned by Indians, non-Indians and the Tribe. The Council further finds that the services, rates, policies, procedures and practices of every utility located and operating upon the Reservation have a demonstrably serious impact which imperils the economic security, health, welfare and general well-being of the Tribe, its members, and all residents of the Reservation and that regulation of every such utility by the Tribe is a necessary and proper exercise of the sovereign authority of the Tribe. The Council further finds that regulation of such utilities located, operating or providing services upon the reservation is an essential governmental function of the Tribe and that regulation of every such utility located, operating or providing services upon the Reservation by the State of Nebraska or any municipality or political subdivision of the State is an infringement upon the right of the Tribe to make its own lands and be governed by them and demonstrably imperils the political integrity and right of self-government of the Tribe. [TCR 07-53]

15-106 Illegality of State Tax Collection by Utilities. Any and all state taxes, whether embedded in rates or identified as a line item on retail or commercial utility bills, are illegal as a matter of public policy

and law for any and all Indian persons, tribally-owned enterprises and tribal programs located on the Reservation. [TCR 07-53]

15-107 Benefits Provided by Tribal Government to Utilities. Among the numerous benefits provided by the Tribal government to all utilities located, operating or providing services within the Reservation are the following:

1. The provision of governmental services, including sewer and water systems, police and fire protection, clearing and maintenance of approved right-of-ways on trust and allotted lands on the Reservation, and a Tribal court system of general jurisdiction;
2. The promotion and regulation of economic activities within the Tribe's sovereign jurisdiction;
3. The orderly development and protection of the Reservation lands, resources and communities. [TCR 07-53]

15-108 Purpose. The Tribal Council hereby declares it to be in the public interest that all Utilities be regulated as provided by this Title in order to:

1. Inventory and regulate all utility facilities and any and all right of way corridors, encumbrances, and uses on the Reservation;
2. Provide all retail customers of utility services and commodities within the Reservation with adequate and reliable services at reasonable rates, consistent with the financial and economic requirements of such Utilities and their need to construct facilities to provide such services and commodities or otherwise to obtain utility supplies;
3. Avoid unnecessary duplication of facilities which increase costs of service to the consumer and to minimize disputes between Utilities that may result in inconvenience or diminished efficiency in service to such customers;
4. Control rates, connection of service, disconnection of service, reconnection, deposit and overdue payment charges;
5. Prohibit discriminatory or unreasonable preferences or advantages to any consumer or group of consumers by providers of utility services.
6. Promote consistency and a seamless regulatory structure for the Reservation and its residents through exclusive tribal regulation of Utilities. [TCR 07-53]

15-109 Scope of Services to be Regulated.

1. Services to be regulated by the Winnebago Tribe shall initially include electricity, telecommunications, water, wastewater, gas, and heating services.
2. At such time as the Winnebago Tribe shall deem appropriate, the Winnebago Tribe shall extend its active regulatory jurisdiction to other utility services and facilities, as its utility Board shall identify. [TCR 07-53]

15-110 Territory, Persons and Property Affected. To the extent permitted by Tribal and federal law, this Title, including any subsequent amendments and related regulations, and Board regulatory authority shall apply to the Winnebago Reservation, as defined by its historical boundaries under the treaties with the United States signed on March 8, 1865 and June 22, 1874, including, but not limited to, all lands, islands, waters, roads, and bridges, and all interests herein, whether in trust or non-trust status, and such other lands, islands, waters or any interest therein thereafter added to the Reservation, including Thurston and Woodbury Counties. [TCR 07-53]

15-111 Explicit and Implicit Intention for State Law Preemption. The Winnebago Tribe of Nebraska has exclusive jurisdiction over utilities or entities operating within or maintaining, or

controlling any utility equipment or utility facilities within the Reservation that furnish or seek to furnish at retail price any utility service product or commodity to any consumer. The Tribe, subject solely to the supremacy of federal law, exercises civil regulatory jurisdiction over all residents on the Reservation. In order to provide for the equitable regulation and protection of such utilities, the Tribe, Tribal members and non-members within the Reservation, it is the express intent of the Council that this Title shall preempt any law enacted by the State of Nebraska or local jurisdictions within the State purporting to regulate such utilities located, operating or providing services within the Reservation. [TCR 07-53]

TITLE 15
ARTICLE 2
GENERAL PROVISIONS

15-201 Title and Date.
15-202 Sovereign Immunity.
15-203 Definition of Terms.

15-201 Title and Date. The Title of this Winnebago Tribal Title shall be "Utilities" and come into force on the date of enactment by the Winnebago Tribal Council. [TCR 07-53]

15-202 Sovereign Immunity. The Winnebago Tribe of Nebraska, and all its constituent parts, including the Tribal Utility Board established pursuant to this Title, are immune from suit in any jurisdiction except to the extent that such immunity has been expressly and unequivocally waived by the Tribal Council in this Title or elsewhere. Nothing in this Title shall be construed as waiving the sovereign immunity of the Tribe or any of its constituent parts, including the Tribal Utility Board, except that after the exhaustion of Tribal administrative remedies as provided herein, a party aggrieved by a Board decision may petition the Winnebago Tribal Court for review of the decision by the Board. [TCR 07-53]

15-203 Definition of Terms. In this Title, except where otherwise specifically provided or the context otherwise requires, the following terms and expressions shall have the following meanings:

1. "Board" refers to the Winnebago Tribe of Nebraska's Tribal Utility Board created and established under this Title.
2. "Board Member" refers to one of the members of the Board.
3. "Council" refers to the Tribal Council of the Winnebago Tribe of Nebraska.
4. "Corporation" refers to a private or public corporation or company incorporated under the laws of any nation, state or tribe, a municipality, an association, a cooperative whether incorporated or unincorporated, a joint stock association, a business trust, or any political subdivision or agency, but shall not mean the Winnebago Tribe or any of its political subdivisions, agencies, or enterprises.
5. "Tribe" refers to the Winnebago Tribe of Nebraska.
6. "Director" refers to the Tribal Utility Board Director acting in his or her official capacity.
7. "Rate" means every compensation, charge, fare, toll, tariff, rental and classification, or any of them, demanded, observed, charged, or collected by any utility for any service product or commodity, offered by it to the public, and any rules, regulations, practices or contracts affecting any such compensation, charge, fare, toll, rental, tariff or classification.
8. "Service" shall refer to the furnishing by any utility or entity of any utility service, product or commodity; the installation, removal or repair of equipment or facilities utilized in the delivery of measuring the service, product or commodity of any utility or entity providing such.
9. "Tribal Utility Account" refers to the account established by Section 15-314 of this Title.
10. "Utility" or "Utilities" refers to any person, corporation or other legal entity, its lessee, trustee, and receiver, now or hereafter located, operating or providing services within the Reservation, including those maintaining or controlling equipment or facilities for furnishing at retail price telecommunications services; pipeline utilities engaged in the transportation of gas, oil, coal and water; electric utilities engaged in the generation and distribution of light, heat or power; gas utilities engaged in the distribution of natural, synthetic or artificial gas; water companies for the storage and distribution of water for domestic or other beneficial use; heating utilities that operate, maintain, or control any equipment or facilities. [TCR 07-53]

TITLE 15
ARTICLE 3
WINNEBAGO TRIBAL UTILITY BOARD; REGULATORY

15-301 Creation of Winnebago Tribal Utility Board.
15-302 Number and Selection of Board Members.
15-303 Terms of Office.
15-304 Board Qualifications.
15-305 Initial Appointment of the Utility Board.
15-306 Vacancies.
15-307 Resignations.
15-308 Removals.
15-309 Officers of the Board and Duties of Officers.
15-310 Compensation.
15-311 Quorum.
15-312 Majority Vote.
15-313 General Procedures of the Board.
15-314 Tribal Utility Account Established.
15-315 Jurisdiction of Board.
15-316 Powers and Duties of Board With Respect to Utilities.
15-317 Annual Reports by Utilities.
15-318 Production of Records.
15-319 Investigation.
15-320 Hearings; Examiner.
15-321 Rules of the Board.
15-322 Board Employees and Expenses.

15-301 Creation of Winnebago Tribal Utility Board. The Winnebago Tribe of Nebraska hereby creates and establishes, pursuant to this Title, the Winnebago Tribal Utility Board, a regulatory governmental agency and subordinate division of the Winnebago Tribe of Nebraska. [TCR 07-53]

15-302 Number and Selection of Board Members. The Board shall be comprised of five voting members appointed by Council who satisfy the qualifications set forth in this Title. Each member of the Board shall be a resident on the Winnebago Reservation. The tribal treasurer shall serve as one of the five members. [TCR 07-53]

15-303 Terms of Office. Board Members shall serve three (3) year terms and shall hold office until their qualified successors have been appointed; provided however, the initial Board shall have terms of office as described herein. [TCR 07-53]

15-304 Board Qualifications. All Board Members that apply and are appointed by Council shall be able to provide evidence of proficiency, professional experience and/or familiarity with utility and/or corporate issues, operations, policy or other experience deemed of sufficient relevance by Council. Board Members shall comply with the background and other requirements of any elected or appointed tribal representatives of the Winnebago Tribe of Nebraska. [TCR 07-53]

15-305 Initial Appointment of the Utility Board. The Council shall determine the initial terms of appointed Board Members. Two Board Members appointed to the initial Board shall serve terms of three (3) years. Two Board Members appointed to the initial Board shall serve terms of two (2) years. The remaining Board Member appointed to the initial Board shall serve a term of one (1) year. [TCR 07-53]

15-306 Vacancies. If any Board member shall die, resign, be removed, or for any reason be unable to serve as a Board Member, the Council shall declare that position vacant and shall appoint another person to fill that position. The term of office of any person appointed to replace an initial Board Member shall be for the balance of any unexpired term for that position. [TCR 07-53]

15-307 Resignations. Any Board Member may resign by delivering a written resignation to the President of the Board. Such resignation shall be effective upon receipt, unless otherwise provided by the terms thereof. A Board Member's resignation under this Section or removal under Section 15-308 below

shall also terminate that Board Member's status, if applicable, as a presiding officer of the Board. [TCR 07-53]

15-308 Removals. Board Members accepting their appointment agree that they may be removed by the Council for serious inefficiency, neglect of duty, malfeasance, misfeasance, nonfeasance, or misconduct in office, but, except as provided below in this Section, only after a hearing before the Council, and only after the Board Member has been given written notice of the specific charges at least ten (10) days prior to such hearing. At any such hearing, the Board Member shall have the opportunity to be heard in person or by counsel and to present witnesses on his/her behalf. If the Council determines that immediate removal of a Board Member is necessary to protect the interest of the Tribe, the Board Member may be temporarily removed immediately, and the question of permanent removal shall be determined pursuant to the hearing procedures specified herein. A written record of all removal proceedings together with the charges and findings thereon shall be kept by the Tribal Secretary. A decision on removal by Council shall be final and may not be appealed. [TCR 07-53]

15-309 Officers of the Board and Duties of Officers.

1. President. The President of the Board shall be appointed by the Council from among the members of the Board and shall hold office for a term of two (2) years. No Board Member may serve as President for two consecutive terms. The President shall preside over all Board meetings; is authorized to sign on behalf of the Board all documents, decisions, orders, notices or other documents approved for such execution by the Board; and shall have such other powers and duties as may from time to time be assigned to him or her by the Board.
2. Vice President. The Vice President of the Board shall be appointed by the Council from among the members of the Board and shall hold office for a term of one (1) year. Whenever the President is unable to preside or fulfill his/her duties as President, the Vice President shall do so, and when so acting, shall be clothed with all the powers and duties of the President.
3. Secretary. The Secretary of the Board shall be appointed by the Council for a term not to exceed his/her term of office as Board Member. His/her duties shall be those assigned by the Board.
4. Treasurer. The Tribal Treasurer shall serve as Treasurer of the Board and shall perform all functions as such for the Board pursuant to his/her constitutional authority. [TCR 07-53]

15-310 Compensation. Compensation for Board Members, if any, shall be determined by the Council and shall be paid solely from the Tribal Utility Account. [TCR 07-53]

15-311 Quorum. Three (3) Board Members shall constitute a quorum of the Board. A majority of those Board Members present at a meeting at which there is no quorum may by motion adjourn the meeting from time to time for a period not exceeding ten (10) days in any one instance. [TCR 07-53]

15-312 Majority Vote. All questions arising in connection with the action of the Board shall be decided by majority vote of those present and constituting a quorum. [TCR 07-53]

15-313 General Procedures of the Board. No Board Member shall participate in any hearing or proceeding in which such Board Member has any direct personal pecuniary interest. The Board may make or amend such general rules or orders as may be necessary for the orderly regulation of proceedings before it, including forms of notice and the service thereof, which shall conform as nearly as possible to those rules in use by the Winnebago Tribal Courts. Any party may appear before the Board and may be heard in person or by attorney. Every vote and official action of the Board shall be entered into the record and its proceedings shall be published upon the request of any interested person. Every Board Member shall have the right to administer oaths and affirmations in any proceeding pending before the Board. [TCR 07-53]

15-314 Tribal Utility Account Established. It is hereby authorized and directed to be established an account in a federally insured financial institution to be known as the Winnebago Tribal Utility Account. [TCR 07-53]

15-315 Jurisdiction of Board. General Jurisdiction of the Board over Utilities. The general jurisdiction of the Board may extend to and include:

1. Telecommunications companies engaged in the furnishing of telecommunications services, including telegraph, telephone, and wireless companies engaged in the transmission of messages, conversations and data by voice or electronic means;
2. Water and sewer companies engaged in the storage and distribution of water for domestic or other beneficial reservation use;
3. Gas utilities engaged in the distribution of natural, synthetic or artificial gas;
4. Heating utilities engaged in the distribution of heat;
5. Pipeline utilities engaged in the transportation of gas, oil, coal and water;
6. Electric utilities engaged in the generation and distribution of light or power;
7. Electric companies engaged in the generation of power and/or steam;
8. Any other Utility that operates, maintains, or controls any equipment or facilities within the reservation.

Nothing in this Title shall prohibit the Board from making any order affecting rates, contracts, services rendered, adequacy or sufficiency of facilities, of any Utility owned and operated by any state or by any political subdivision of any state or any Utility that is not operated for profit. [TCR 07-53]

15-316 Powers and Duties of Board With Respect to Utilities. The Board shall have power to:

1. Investigate all methods and practices of Utilities or other persons subject to the provisions of this Title;
2. Coordinate or participate materially in the coordination of permitting and approvals for existing and new Utility facilities on the Reservation;
3. Require Utilities or other persons to conform to the laws of the Tribe and to all rules, regulations, and orders of the Board not contrary to law;
4. Require copies of reports, rates, classifications, schedules and time tables in effect and use by such Utilities or other persons and all other information desired by the Board relating to such investigations and requirements to be filed with the Board.
5. Compel enforcement with its lawful orders by proceedings of mandamus or injunction or other proper proceedings, in the name of the Tribe, in any court having jurisdiction of the parties or of the subject matter, including the Winnebago Tribal Court.
6. Hold hearings on good cause shown or on its motion, and to provide notice thereof prior to hearing. Such notice shall be reasonable in view of the nature, scope, and importance of the hearing. If at any time it shall appear to the satisfaction of the Board that all of the interested parties have agreed concerning a matter at hand, the Board may issue its order without a hearing.
7. Require, in its discretion, proof that no unreasonable profit is made in the sale of materials to or service applied for any Utility by any firm or corporation owned or controlled directly or indirectly by the Utility or any affiliate, subsidiary, parent, holding, associate or any corporation whose controlling stockholders are also controlling stockholders of the Utility, before permitting the value of such materials or services to be included in valuations or cost of operations for rate-making purposes. If unreasonable profits have been made in any such transactions, evaluations of such materials or services may be reduced accordingly.

8. Employ and fix the compensation of rate experts, engineers, and all other expert help and assistance for rate increase application hearings, investigations, and proceeds relating to Utilities.
9. Cooperate with and receive technical and financial assistance from the United States or any state for any purposes relating to federal energy laws that deal with energy conservation, rate reform, and Utilities subject to the jurisdiction of the Board. The Board shall also have the authority to file reports, hold hearings and promulgate regulations for any such purposes.
10. Promulgate and enforce rules and regulations consistent with this Title, subject to final approval by the Council.
11. Employ and consult with advisors regarding its duties as it may deem necessary.
12. Require by regulation the filing of any forms or reports necessary for the implementation of this Title.
13. Examine under oath either orally or in writing any agent, officer, or employee of any Utility subject to regulation under this Title, or any other witness with respect to any enforcement action authorized by this Title.
14. Delegate to an individual Board Member, or to the Director or other members of the Board staff or tribal staff, such of its functions as may be necessary to administer this Title efficiently, provided that the Board may not delegate its powers to promulgate rules and regulations, or to hear or rule upon any complaints filed pursuant to this Title.
15. Impose reasonable permitting or licensing fees, subject to final approval by the Council.
16. Adopt by regulation a schedule of fees and charges for services rendered relating to transcripts and the furnishing or certifying of copies of proceedings, files and records.
17. Exercise all authority delegated to it by law, or as may be reasonably necessary in the implementation of any provisions of this Title.

Failure to exercise one or more powers delegated under this Title shall not be deemed a waiver or affect the ability to exercise such powers in the future. [TCR 07-53]

15-317 Annual Reports by Utilities. The Board may require any Utility to file annual reports in such form and content, having regard for the provisions of this Section, as the Board may require, and special reports concerning any matter about which the Board is authorized to inquire or to keep itself informed. [TCR 07-53]

15-318 Production of Records. The Board may require, by order served on any Utility in the matter provided herein for the service of orders, the production, at a reasonable time and place as the Board may designate, of any books, accounts, papers, or records of the Utility relating to its business or affairs within the Reservation, pertinent to any lawful inquiry and kept by such Utility in any office or place within or without the Reservation, or at its option, verified or photo static copies in lieu thereof, so that an examination may be made by the Board or under the direction of the Board. [TCR 07-53]

15-319 Investigation. The Board, upon complaint or upon its own initiative, and whenever it may deem it necessary in the performance of its duties or the exercise of its powers, may investigate and examine the condition and operation of any Utility or any part thereof. [TCR 07-53]

15-320 Hearings; Examiner. The Board may, in addition to the hearings specifically provided for under this Title, conduct any other hearings as may be reasonably required in administration of the powers and duties conferred upon it by this Title. Reasonable notice of all hearings shall be given to persons interested therein as determined by the Board. [TCR 07-53]

15-321 Rules of the Board. The Board shall promulgate such written rules and regulations as are necessary to carry out the orderly performance of all its duties and powers. All rules shall provide for hearings for all interested persons upon reasonable notice to be heard. The Winnebago Tribal Court and

other courts of competent jurisdiction shall take judicial notice of rules and regulations promulgated. [TCR 07-53]

15-322 Board Employees and Expenses. The Board may employ persons or entities and incur such expenses as necessary for the proper discharge of its duties subject to the limitations and restrictions set out in this Section. The Board may utilize regular Tribal staff to accomplish the same upon approval by Council. The total amount disbursed by the Board Treasurer in one fiscal year for the payment of salaries, expenses, and incidentals of the Board shall not exceed the amount in the Board budget for that fiscal year. [TCR 07-53]

TITLE 15
ARTICLE 4
PUBLIC UTILITIES: RESPONSIBILITIES, DUTIES, REQUIREMENTS

15-401 Duty to Provide Adequate Service.
15-402 Unauthorized Utilities Facilities Prohibited.
15-403 Duty to Produce Information on Reservation Easements.
15-404 Disconnection or Discontinuation of Service.

15-401 Duty to Provide Adequate Service. All Utilities shall provide their retail customers utility services and commodities within the Reservation that are adequate and reliable at reasonable rates. All Utilities shall at least comply with standard industry practices for outages and may be appropriately fined for unreasonable practices that lead to detrimental and demonstrable harm to customers. The Board may order higher standards of reliability where such standards are in the best interest of the Tribe, however, the Board shall also approve rate increases as necessary and just to fund needed infrastructure or technical improvements for meeting such higher standards. [TCR 07-53]

15-402 Unauthorized Utilities Facilities Prohibited. Any user of a right-of-way, easement or lands for the operation or ownership of any utility facility who cannot provide any documentation to support any valid authorization, shall be notified by the Board of a procedure and timeline to get said right-of-way, easement or land lease into compliance and registered with the appropriate authorities. [TCR 07-53]

15-403 Duty to Produce Information on Reservation Easements. Every Utility shall supply the following information to the Council on forms to be provided, stating:

1. Name and mailing address of the current holder of the right-of-way or other authorization or current user of a right-of-way if unrecorded or unauthorized;
2. Legal or other description reasonably setting forth the exact location of the right-of-way or other authorization;
3. All purposes for which the right-of-way or other authorization is utilized;
4. A detailed description of all facilities constructed, utilized or operated by the current holder of the authorization;
5. A copy of all documents authorizing the use of Reservation land, and evidence that the Tribe has granted or consented to the authorization;
6. If the current holder is not the original grantee of the right-of-way or other authorization, a copy of all assignments of the authorization from all predecessors in interest and evidence that the Tribe has consented to all such assignments. [TCR 07-53]

15-404 Disconnection or Discontinuation of Service. Utilities shall maintain reasonable public policies for disconnection of customers and for discontinuation of service to customers. Such policies shall provide for reasonable notice prior to disconnection, except in the case of emergencies. [TCR 07-53]

TITLE 15
ARTICLE 5
ELECTRIC UTILITY SERVICE ON WINNEBAGO RESERVATION

15-501	Assigned Service Areas; Nonexclusive Franchise Requirement.	15-505	Energy Conservation & Energy Efficiency.
15-502	Franchise Service Rights; Term of Franchise.	15-506	Lower Income Programs.
15-503	Interconnection Standards and Obligations.	15-507	Environmental Obligations.
15-504	Net Metering.	15-508	Ownership of Wires and Facilities.
		15-109	Valuation of Electric Utility Property. [Reserved]

15-501 Assigned Service Areas; Nonexclusive Franchise Requirement.

1. All Utilities providing energy or utility services to customers on the Reservation must obtain a franchise from the Board to provide service within the Reservation.
2. All franchises shall be nonexclusive, except as expressly reserved for a tribal utility service. [TCR 07-53]

15-502 Franchise Service Rights; Term of Franchise.

1. Franchises may be issued by order of the Board after consideration of all relevant facts submitted to the Board and after consideration of the best interests of the Tribe. The Board shall consider all requests for franchises and shall grant those that are determined to be in the best interests of the Tribe. The Board may require new franchisees to negotiate a tribal tax or license agreement for the term of the franchise as a condition of the franchise.
2. No franchise shall be granted or extended for any longer period of time than 20 years from the date of such grant or extension, unless a previous agreement controls such term. [TCR 07-53]

15-503 Interconnection Standards and Obligations. Utilities shall maintain reasonable public policies for interconnection to their facilities. No Utility shall disapprove an interconnection that meets national standards of safety and reliability. The Tribe, its subsidiaries and/or its affiliated entities shall have the right to interconnect wholesale or retail facilities to the facilities of any Utility under the same terms and conditions as the Utility interconnects to its own facilities. [TCR 07-53]

15-504 Net Metering. All electrical Utilities shall follow the policy of providing for Net Metering on the Reservation. Net Metering is defined as the ability of utility customers to install distributed generation behind the Utility's meter and to run that generator as needed, while the meter nets power coming in to the customer and the power going out of the customer's meter. [TCR 07-53]

15-505 Energy Conservation & Energy Efficiency.

1. Weatherization. Utilities providing electrical utility related services shall promote the weatherization of tribal buildings through programs similar to those available to customers within the State of Nebraska. Any state or federal funds received for these programs by the Utility shall be available for use within the Reservation, if like funding is not also available to the Tribe.
2. Energy Efficiency. Utilities providing electrical utility related services shall promote efficient use of energy through educational programs, technical assistance programs, energy audits, and financial assistance for improving energy efficiency. Any state or federal funds received for

these programs by the franchisee shall be available for use within the Reservation, if like funding is not also available to the Tribe. [TCR 07-53]

15-506 Lower Income Programs. Utilities providing electrical utility related services shall maintain a program for subsidizing low income persons within the Reservation through programs similar to those available to customers within the State of Nebraska. Any state or federal funds received for these programs by the franchisee shall be available for use within the Reservation, if like funding is not also available to the Tribe. The Tribe may provide Utilities with names of customers eligible for these programs if the Tribe determines that the elderly, handicapped, or others should receive a preference in this program. [TCR 07-53]

15-507 Environmental Obligations.

1. Applicability of Environmental Laws. Utilities shall be bound by federal and tribal environmental laws regarding all facilities on the Reservation.
2. Notice of Off-reservation Environmental Issues. Utilities shall provide written notice to the Tribe of all new activities or proposals of the Utility that may have a significant impact on the regional and/or Reservation environment. [TCR 07-53]

15-508 Ownership of Wires and Facilities.

1. Unless an easement or right-of-way document signed by the Tribe and approved by the Bureau of Indian Affairs exists with regard to Utilities facilities, no Utility holds real property rights or may claim that real property rights have been transferred due to the existence of facilities on the Reservation. All facilities without such documentation are deemed to be personal property.
2. Any new facilities installed on the Reservation by Utilities in order to extend service to new customers shall be the personal property of the Tribe, and not the personal property of the Utility, when the new facilities are paid for by the new customer or by a particular user. The Utility shall provide notice to the Tribe of each such facility constructed.
3. Any facilities which are the personal property of the Tribe pursuant to this Section that are used by Utility to deliver their product or service shall be operated and maintained by the Utility in a manner consistent with the operation and maintenance of their own facilities. [TCR 07-53]

15-509 Valuation of Electric Utility Property. [Reserved] [TCR 07-53]

TITLE 15
ARTICLE 6
TELECOMMUNICATIONS SERVICE

[Reserved]

TITLE 15
ARTICLE 7
WATER SERVICE

[Reserved]

TITLE 15
ARTICLE 8
WASTEWATER SERVICE

[Reserved]

TITLE 15
ARTICLE 9
GAS UTILITIES

[Reserved]

TITLE 15
ARTICLE 10
HEATING UTILITIES

[Reserved]

TITLE 15
ARTICLE 11
OTHER UTILITIES

[Reserved]

TITLE 15
ARTICLE 12
TRIBAL UTILITY BOARD – ENTERPRISE

[Reserved]

TITLE 16
CIVIL TRESPASS

SUMMARY OF CONTENTS

SECTION	ARTICLE-PAGE
1. TABLE OF REVIONS	ii
2. TABLE OF CONTENTS	iii
3. ARTICLE 1: CIVIL TRESPASS STATUTE	1-1

TITLE 16
TABLE OF REVISIONS

The following table is included in this title as a guide for determining whether each article properly reflects the current version. This table will be updated with the revision of each article.

Through usage and supplementation, pages in bound titles can be inserted and removed when sections are revised on an article-by-article basis. This table should be placed before the Table of Contents in the title.

The "Article" column lists each article, and the "Section" column lists any corresponding sections that have been revised, in sequence. The "Revised Date" column reflects the effective date of the revision (e.g., "6/20/15"). If an article is not listed in the table, it has not been revised since the December 2015 Winnebago Tribal Code update and distribution.

Article	**Section**	**Revised Date**

TITLE 16
CIVIL TRESPASS

ARTICLE 1
CIVIL TRESPASS STATUTE

16-100 Citation.
16-101 Purpose.
16-102 Definitions.
16-103 Applicability.
16-104 Notice of trespass.
16-105 Enforcement.
16-106 Enforcement by United States.
16-107 Civil penalties.
16-108 Interest on penalties.
16-109 Review by the Chief Administrative Officer.
16-110 Actions by hearing officer.
16-111 Enforcement after appeal.
16-112 Actions in the Tribal Court.
16-113 Severability.
16-114 Effective date.
16-115 Amendment.

TITLE 16
CIVIL TRESPASS

ARTICLE 1
CIVIL TRESPASS STATUTE

16-100 Citation.
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16-110 Actions by hearing officer.
16-111 Enforcement after appeal.
16-112 Actions in the Tribal Court.
16-113 Severability.
16-114 Effective date.
16-115 Amendment.

16-100 Citation. This Act shall be known as The Civil Trespass Statute. [TCR 93-55]

16-101 Purpose. It is the policy of the Winnebago Tribe of Nebraska (hereinafter "Tribe") to reserve consent for use of its land and to impose civil penalties for trespass on Tribal lands. The purpose of this Act is to effect that policy. [TCR 93-55]

16-102 Definitions. As used in this title:

1. "Trespass" means the unconsented or unauthorized use or entry on Winnebago Tribal lands, including unauthorized uses under existing permits and failure to remove improvements or materials from the Tribal land at the expiration of valid permits.
2. "Easement" or "Right-of-Way" or "Land Use Permit" means the right granted by the Winnebago Tribe to use or enter upon for permitted purposes Winnebago Tribal trust or fee lands. It also means a duly approved grant of easement, right-of-way or permit of temporary, fixed or perpetual term, approved by the secretary of the Interior or his/her authorized representative, for trust lands, under applicable federal law and regulations. "Land use permit" includes sand and gravel and barrow material permits.
3. "Lease" means any lease or agreement to allow the use of Winnebago Tribal lands, including business site leases, to any person, company or entity by the Winnebago Tribal Council or its designated committee(s). If trust lands are leased the lease must be a duly approved by the secretary of the Interior or his/her authorized representative, under applicable federal law and regulations.
4. "Permit" means any duly authorized usufruct or permissive use of Winnebago Tribal lands for a limited time.
5. "Winnebago Tribal Council" means the governing body of the Winnebago Tribe of Nebraska.
6. "Winnebago Tribal land" means any land or interest in land held in trust by the United States of America for the Winnebago Tribe or its members, and any land or interest in land held by the Winnebago Tribe in fee or in any other form.
7. "Person" means any individual, group of individuals, corporation, partnership or other entity.
8. "Executive Director" means the executive director of the Winnebago Tribe of Nebraska, or his/her successor or designee. Such designation may be made entirely within the discretion of the Chief Administrative Officer.
9. "Area Director" means the Bureau of Indian Affairs Area Director or her/his successor or designee.

10. "Secretary" means the Secretary of the United States Department of the Interior.
11. "Chairman" means the Chairman of the Winnebago Tribal Council.
12. "BIA" means the Bureau of Indian Affairs of the United States Department of the Interior. [TCR 93-55, 93-60, 10-43]

16-103 Applicability. Any person who trespasses on or makes unconsented use of Winnebago Tribal land shall be subject to the penalties and other enforcement actions set forth in this Act. [TCR 93-55]

16-104 Notice of trespass.

1. Notice to Trespasser. The executive director, on behalf of the Winnebago Tribe, shall serve, or cause to be served, a written notice of trespass on any person trespassing on or making unconsented use of Winnebago Tribal land. The notice shall be served in person or by certified U.S. mail to the last known address of the trespasser. The notice shall identify the person who is trespassing, the location and date(s) of the trespass, the action(s) to be taken by the trespasser, and the time limits within which the trespasser must take action to cure the trespass. The action(s) to be taken by the trespasser shall be determined in each case by reference to the regulations adopted by the Winnebago Tribal Council.
2. Notice to Departments. The executive director shall deliver, or cause to be delivered, a copy of the notice of trespass to the office of the chairman of the Winnebago Tribe (and any relevant committee of the Tribal Council). The executive director shall deliver, or cause to be delivered a copy of the notice of trespass to (any relevant committee and department of the Tribe). [TCR 93-55, 10-43]

16-105 Enforcement. If the trespass is not cured by the actions required in the notice of trespass pursuant to Section 16-104 of this Act within the time limits provided in the notice, in addition to assessing penalties, the executive director may:

1. Order the person trespassing on Winnebago Tribal land to cease activities or restrict the trespasser's access to Winnebago Tribal land; or
2. Request BIA law enforcement officers to enforce an order previously issued or seize and impound the trespasser's property which is on Winnebago Tribal land; or
3. Recommend to the chairman that he initiate exclusion proceedings against the trespasser pursuant to, (relevant Tribal laws or constitutional provisions); or
4. Recommend that legal counsel for the Tribe file suit as provided for in 16-112, or
5. Take such other action as is appropriate under applicable Tribal or federal law. [TCR 93-55, 10-43]

16-106 Enforcement by United States. The chairman of the Winnebago Tribe, or his designee, may request the area director of the BIA to enforce applicable federal law or regulations governing trespass on Winnebago Tribal trust lands and the provisions of this statute at any time that it appears appropriate, including any time subsequent to an enforcement action having been taken pursuant to Section 16-105 of this Act. [TCR 93-55]

16-107 Civil penalties.

1. In addition to any enforcement authorized by this statute, the executive director shall impose civil penalties on any person trespassing on Winnebago Tribal lands, commencing on the first day of trespass as documented in the notice of trespass, and for each day the trespass continues calculated as follows:

a. For electrical transmission lines which pass over, under and/or upon Winnebago Tribal lands the fine shall be calculated based upon the capacity-of the line(s);
b. For gas (including all gaseous material) pipelines which pass over, under or upon Winnebago Tribal lands the fine shall be calculated based on the throughput, or if the throughput is not determinable based on the capacity of the line(s);
c. For oil, liquid gases, and any other liquid and/or solid products transported through pipelines passing over, under or upon Winnebago Tribal lands the fine shall be calculated based upon the throughput of the material, or if the throughput is not determinable based upon the capacity of the line(s);
d. For all other unconsented uses of Winnebago Tribal land the executive director may assess a fine per day of violation.

2. The specific measures for calculating fines and penalties shall be contained in the rules and regulations adopted by the Winnebago Tribal Council.
3. Penalties assessed pursuant to this section shall be due and payable to the Winnebago Tribe within ten (10) calendar days of service of notice of assessment. Failure to timely pay a fine imposed as required shall be considered an additional violation of this Act and shall constitute grounds for exclusion from Winnebago Tribal lands. Monies collected through fines and penalties shall be used by the Winnebago Tribal Council to administer and enforce this Act. [TCR 93-55]

16-108 Interest on penalties. Interest on any delinquent payment of penalties shall accrue at the current prim rate plus five (5) % compounded monthly until paid. The interest shall be prorated daily from the due date until the date of receipt. Interest monies shall be deposited in the account established by the Winnebago Tribal Council set up to fund this program. [TCR 93-55]

16-109 Review by the Chief Administrative Officer. Any person who receives a notice of trespass or notice of assessment pursuant to this Act may, within fifteen (15) calendar days of the date the notice of trespass or notice of assessment is served upon him/her by the chief administrative officer, demand that the chief administrative officer conduct a review of the notice of trespass or notice of assessment.. The demand for review shall state the basis for review and supporting facts. Issues on review to the chief administrative officer shall be limited to: (1) the person subject to the notice of trespass or notice of assessment is not trespassing on tribal land; (2) proper notice and opportunity to cure was not provided; and/or (3) the assessed fines do not conform to regulations. Filing of a timely demand for review shall stay any court action on that notice brought by the chief administrative officer or the person subject to the notice. Upon receiving a demand for review, the chief administrative officer shall conduct an internal review of the matter as set forth in his/her file and presented by the demanding person's submissions. The chief administrative officer shall give due consideration to the materials submitted by the person demanding the review. The chief administrative officer shall not be required to consider materials submitted by the person demanding the review that are clearly not relevant to the issues presented. If after conducting the review the chief administrative officer is satisfied that the notice of trespass or notice of assessment is proper, he/she shall so notify in writing the person demanding the review. Service of this notice shall end any stay that is in place. Demand for a review under this Section shall not be a prerequisite for a court action as provided for in 16-112. [TCR 93-55, 10-43]

16-110 Actions by hearing officer. Upon appointment by the Tribal Council and receipt of the notice of appeal, the hearing officer shall set the date for an evidentiary hearing to be held within thirty (30) days. The hearing officer may take any of the following actions after hearing an appeal filed pursuant to this Act:

1. Affirm or reverse the decision or order of the executive director.

2. Order the rebate of any penalties paid by a person found to have been cited without just cause under this Act.
3. Order additional penalties and fines, and adjust the fines if they have been miscalculated or the trespasser is found to have underpaid the ordered fines. [TCR 93-55]

16-111 Enforcement after appeal. The executive director and law enforcement of officers of the BIA are authorized to enforce all orders issued pursuant to this Act. [TCR 93-55]

16-112 Actions in the Tribal Court. The Winnebago Tribal Court shall have jurisdiction to hear actions brought pursuant to this Article by either the Tribe or the person subject to a notice of trespass or notice of assessment. If the Court finds that a trespass has been committed or is ongoing, the Court shall have the power to enjoin trespasses on tribal land, enforce penalties assessed by the chief administrative officer pursuant to regulation, order removal of persons and property from tribal land and provide any other appropriate relief. Orders for payment of civil penalties shall be enforceable against the trespasser in the same manner as would any other money judgment. [TCR 10-43]

16-113 Severability. If any part or application of this law is held to be invalid by any court of competent jurisdiction, the remainder of this law or its application shall not be affected. [TCR 93-55, 10-43]

16-114 Effective date. This law shall be EFFECTIVE May 4, 1993. [TCR 93-55, 10-43]

16-115 Amendment. This Act and its implementing regulations may be amended by a majority vote of the Winnebago Court Council. [TCR 93-55, 10-43]

TITLE 17
INTERESTS IN REAL PROPERTY

SUMMARY OF CONTENTS

SECTION		ARTICLE- PAGE
1. TABLE OF REVISIONS		ii
2. TABLE OF CONTENTS		iii
3. ARTICLE 1: GENERAL PROVISIONS		1-1
Part A	General Provisions	1-1
Part B	Eviction Procedures	1-4
Part C	Foreclosure of Interests in Real Property	1-5

TITLE 17
TABLE OF REVISIONS

The following table is included in this title as a guide for determining whether each article properly reflects the current version. This table will be updated with the revision of each article.

Through usage and supplementation, pages in bound titles can be inserted and removed when sections are revised on an article-by-article basis. This table should be placed before the Table of Contents in the title.

The "Article" column lists each article, and the "Section" column lists any corresponding sections that have been revised, in sequence. The "Revised Date" column reflects the effective date of the revision (e.g., "6/20/15"). If an article is not listed in the table, it has not been revised since the December 2015 Winnebago Tribal Code update and distribution.

Article	**Section**	**Revised Date**

TITLE 17
INTERESTS IN REAL PROPERTY
ARTICLE 1
PART A
GENERAL PROVISIONS

17-201 Applicability of Article and purpose.
17-202 Tribal court jurisdiction.
17-203 Definitions.
17-204 Recording.
17-205 Priority.
17-206 Tribal notice.
17-207 Service of process and procedures.

TITLE 17
ARTICLE 1
PART B
EVICTION PROCEDURES

17-208 Unlawful detainer.

TITLE 17
ARTICLE 1
PART C
FORECLOSURE OF INTERESTS IN REAL PROPERTY

17-216 Filing of petitions.
17-217 Cure of default by subordinate lienholder or other lienholder.
17-218 Judgment in favor of the secretary for default of leasehold mortgage.
17-219 Sale of premises ordered by Tribal Court.
17-220 Limitation on power of Tribal Court.
17-221 Suspension of activity on debt.
17-222 Inclusion of co-debtor in action.
17-223 Complainants; disclosure obligations.
17-224 Effect of prior judgment.
17-225 Sale of premises by police or Tribal Court officer.
17-226 Publication and posting notice of sale.
17-227 Content of notice.
17-228 Transfer of property to purchaser.
17-229 Application of proceeds to discharge of debt and ownership surplus.
17-230 Disposition of unclaimed surplus.
17-231 Cure period.
17-232 Stay of proceedings upon payment by defendant of sums due.
17-233 Sale of premises in parcels.
17-234 Order of sale upon default in payment of installments.
17-235 Sale of entire property.
17-236 Disposition of proceeds of sale of entire property.
17-237 Actions to be taken upon satisfaction or payment.
17-238 Fee lands not affected.
17-239 Fee land foreclosures.

TITLE 17
ARTICLE 1
PART A
GENERAL PROVISIONS

17-201 Applicability of Article and purpose.
17-202 Tribal court jurisdiction.
17-203 Definitions.
17-204 Recording.
17-205 Priority.
17-206 Tribal notice.
17-207 Service of process and procedures.

17-201 Applicability of Article and purpose. The provisions set forth herein shall apply to all real property interests, including, but not limited to, leasehold and leasehold mortgage interests in trust or allotted land, mortgages, deeds of trust, land sales contracts, and any document purporting to pledge real property and/or improvements as security for a debt relating to real property situated within the boundaries of the Winnebago reservation, except property title to which is held in fee simple. The purpose of this Article is to establish a regulatory structure for transferring and recording interest in real property and to assist the Tribe and its members in obtaining financing for the construction and/or purchase of family residences on trust land within the jurisdiction of the Tribe by prescribing procedures for the recording, priority and foreclosure of leasehold mortgages given to secure loans made by or guaranteed by the Department of Veterans Affairs under the Native American Veteran Direct Loan Program authorized under Title 38 U.S. Code Section 3761, *et seq.*, Section 184 of the Housing Loan Guarantee Program established pursuant to the Housing and Community Development Act of 1992 (P.L. 102-55), or other similar tribal, state or federal program. For purposes of this Article, a trailer house, mobile home or manufactured home is considered an improvement to real property unless such home remains on wheels. [TCR 08-28]

17-202 Tribal Court jurisdiction. Except as otherwise provided by federal law and as provided herein, the Tribal Court shall have exclusive jurisdiction over all actions pertaining to interests in Indian lands within the boundaries of the reservation that are taken pursuant to this Article. [TCR 08-28]

17-203 Definitions.

1. "Borrower" shall mean the borrower under the terms of the financing documents.
2. "Financing documents" means all documents evidencing and securing a construction loan or a mortgage loan relating to housing on Indian lands.
3. "Indian lands" shall mean all land located within the boundaries of the Winnebago reservation, except land title to which is held in fee simple.
4. "Lease" shall mean the lease of trust property for which a leasehold mortgage, as defined in this document, has or will be given.
5. "Leasehold mortgage" shall mean the mortgage of a lease of trust property given to secure a loan made under or guaranteed by the Section 184 housing loan guarantee program established pursuant to the Housing and Community Development Act of 1992 (P.L. 102-550), the Department of Veterans Affairs Native American Veteran Direct Loan Program authorized under Title 38 U.S.C §3761 et seq., or similar program.
6. "Leasehold mortgage foreclosure proceeding" shall mean a proceeding in the Tribal Court:
   a. To foreclose the interest of a mortgagor, and each person or entity claiming through a mortgagor, in a lease for which a mortgage has been given under loan; and
   b. To assign such lease to a lender or a lender's assignee.

7. "Lender" shall mean any private or governmental lender who loans money to a borrower for construction, acquisition or rehabilitation of a home.
8. "Lessor" shall mean the beneficial or equitable owner of a trust or otherwise restricted property under a lease for which a mortgage has been given, or the heir, successor, executor, administrator or assignee of such lessor.
9. "Mortgagor" shall mean the Tribe or any person who has executed a leasehold mortgage, heir, successor, executor, administrator or assign of the Tribe or such person.
10. "Mortgagee" shall mean the mortgagee under any leasehold mortgage as defined in this Article or the successor in interest of any such mortgagee, including the lender or the lender's assignee under any such mortgage.
11. "Nuisance" shall mean the maintenance on real property of a condition which:
    a. Unreasonably threatens the health or safety of the public or neighboring land users; or
    b. Unreasonably and substantially interferes with the ability of neighboring property users to enjoy the reasonable use and occupancy of their property.
12. "Secretary" shall mean the secretary of the United States Department of the Interior, an officer of the United States.
13. "Subordinate lienholder" shall mean the holder of any lien, including a subsequent mortgage, perfected subsequent to the recording of an interest in real property under this Article.
14. "Tenant" shall mean any person who occupies real property under a lease, rental agreement or other agreement with a lessor.
15. "Tribal Court" shall meant the Winnebago Tribal Court as established by the laws of the Tribe or any successor tribunal as may hereafter be authorized by the laws of the Tribe to exercise the powers and functions of a court of law.
16. "Tribal law enforcement officer" shall mean any tribally-appointed or Bureau of Indian Affairs officer with law enforcement jurisdiction on the reservation.
17. "Tribal recording clerk" shall mean the clerk of the Tribal Court or such other person who may be designated by the Tribe to perform the recording functions required by this Article or any deputy or designee of such person.
18. "Tribe" means the Winnebago Tribe of Nebraska.
19. "Unlawful detainer action" shall be a suit brought before the Tribal Court to terminate a tenant's interest in real property and/or to evict any person from occupancy of real property.
20. "Waste" is spoil or destruction by a tenant of land, buildings, gardens, trees or other improvements which result in substantial injury to lessor's interest in the property.
21. "Writ of restitution" is an order of the Tribal Court:
    a. Restoring an owner or lessor to possession of real property; and
    b. Evicting a tenant or other occupant therefrom. [TCR 08-28]

17-204 Recording.

1. The Tribal recording clerk shall maintain on the premises of the Tribal Court a system for the recording of documents transferring interests in real property, including but not limited to leasehold mortgages.
2. The Tribal recording clerk shall endorse upon any real estate document received for recording:
    a. The date and time of receipt of the document;
    b. The filing number, to be assigned by the Tribal recording clerk, which shall be a unique number for each document received; provided, however, that all related documents shall be assigned a single number; and
    c. The name of the Tribal recording clerk receiving the document.
3. Upon completion of the above endorsements, the Tribal recording clerk shall make a true and correct copy of each document and shall certify the copy as follows:

WINNEBAGO TRIBE OF NEBRASKA)
) ss.
WINNEBAGO RESERVATION)

I certify that this is a true and correct copy of a document received for recording this date.

Given under my hand and seal this _____ day of _____.

(SEAL)

(Signature)

4. The Tribal recording clerk shall maintain a copy of the endorsed document and the certification in the Tribal Court records and shall return the original document to the person or entity that presented the same for recording.
5. The Tribal recording clerk shall also maintain a log of each real estate document recorded. With respect to each leasehold mortgage there shall be entered the following information:
   a. The name of the mortgagor of each leasehold mortgage, identified as such;
   b. The name of the mortgagee of each leasehold mortgage, identified as such;
   c. The name of the grantor, grantee or other designation of each party named in the financing documents or other related documents;
   d. The beneficial owner of the subject real estate;
   e. The date and time of receipt of the documents;
   f. The filing number assigned by the Tribal recording clerk; and
   g. The name of the Tribal recording clerk receiving the leasehold mortgage or other documents.
6. The certified copies of the leasehold mortgage and other documents and the log maintained by the Tribal recording clerk shall be available during regular Tribal Court hours for public inspection and copying.
7. A copy of the document and certification referred to in subsection 4 of this section shall, at the time the original document is returned, be forwarded by the Tribal recording clerk to the Tribal credit department. [TCR 08-28]

17-205 Priority. The lien of a leasehold mortgage or any other debt instrument relating to real property recorded in accordance with the recording procedures set forth in this Article shall have priority over any lien not perfected at the time of such recording and any subsequent lien or claim excepting a lien or claim arising from a tribal leasehold tax assessed after the recording of the leasehold mortgage or other debt instrument. Nothing in this document shall prevent any person or entity from recording a leasehold mortgage or other debt instrument in accordance with state law or from filing a leasehold mortgage with the Bureau of Indian Affairs. [TCR 08-28]

17-206 Tribal notice. The chairman of the Winnebago Tribe shall be given notice, by registered mail, of any action filed under this Article. [TCR 08-28]

17-207 Service of process and procedures. Except as specifically stated herein, the laws of the Tribe governing service of process and all other matters relating to the conduct of Tribal Court proceedings shall apply to any mortgage foreclosure proceeding pursuant to this Article. [TCR 08-28]

TITLE 17
ARTICLE 1
PART B
EVICTION PROCEDURES

17-208 Unlawful detainer.

17-208 Unlawful detainer. Upon foreclosure of real property, the owner of real property, lessor or lender may commence an action for forcible entry and detainer pursuant to Winnebago Tribal Code Title II, Article 13, Forcible Entry and Detainer. [TCR 08-28]

TITLE 17
ARTICLE 1
PART C
FORECLOSURE OF INTERESTS IN REAL PROPERTY

17-216 Filing of petitions.
17-217 Cure of default by subordinate lienholder or other lienholder.
17-218 Judgment in favor of the secretary for default of leasehold mortgage.
17-219 Sale of premises ordered by Tribal Court.
17-220 Limitation on power of Tribal Court.
17-221 Suspension of activity on debt.
17-222 Inclusion of co-debtor in action.
17-223 Complainants; disclosure obligations.
17-224 Effect of prior judgment.
17-225 Sale of premises by police or Tribal Court officer.
17-226 Publication and posting notice of sale.
17-227 Content of notice.
17-228 Transfer of property to purchaser.
17-229 Application of proceeds to discharge of debt and ownership surplus.
17-230 Disposition of unclaimed surplus.
17-231 Cure period.
17-232 Stay of proceedings upon payment by defendant of sums due.
17-233 Sale of premises in parcels.
17-234 Order of sale upon default in payment of installments.
17-235 Sale of entire property.
17-236 Disposition of proceeds of sale of entire property.
17-237 Actions to be taken upon satisfaction or payment.
17-238 Fee lands not affected.
17-239 Fee land foreclosures.

17-216 Filing of petitions.

1. All petitions for the foreclosure or satisfaction of leasehold mortgages, mortgages or other liens on real property or improvement thereto shall be filed in the Tribal Court.
2. Upon the default of a mortgagor under a leasehold mortgage or other debt instrument, a lender or mortgagee may commence the appropriate foreclosure proceeding in the Tribal Court by filing:
   a. A verified complaint:
      i. Naming the debtor under the debt instrument or mortgagor(s) and each person or entity claiming through the mortgagor(s) subsequent to the recording of a leasehold mortgage or other debt instrument, including each subordinate lienholder or other junior lienholder (except the Tribe with respect to a claim for a Tribal leasehold tax), as a defendant;
      ii. Describing the property, including a description of the trust or restricted status of such property;
      iii. Stating the facts concerning the execution of the lease and the leasehold mortgage or other debt instrument, the facts concerning the recording of the leasehold mortgage or other debt instrument, the facts concerning the alleged default(s) of the mortgagor(s) or other debtor, and such other facts as may be necessary to constitute a cause of action;
      iv. Having appended as exhibits true and correct copies of each promissory note, lease, leasehold mortgage or other debt instrument or assignment thereof relating to the property or other debt instrument; and
      v. Including an allegation that all relevant requirements and conditions prescribed in (a) any applicable federal law including the regulations promulgated thereunder and (b) the provisions of the lease, have been complied with by the lender.

b. A summons, issued as in other cases, requiring the mortgagor and/or each other defendant to appear for a trial upon the complaint on a date and time specified in the summons. [TCR 08-28]

17-217 Cure of default by subordinate lienholder or other lienholder. Prior to the entry of a judgment of foreclosure, any mortgagor, subordinate lienholder, or other lienholder may cure the default under the leasehold mortgage, the financing documents or other related documents. Any subordinate lienholder or other lienholder who has cured a default shall thereafter have included in its lien the amount of all payments made by such subordinate lienholder or other lienholder to cure the default(s), plus interest on such amounts at the rate stated in the note for the leasehold mortgage or other debt instrument, together with reasonable costs and attorneys' fees. [TCR 08-28]

17-218 Judgment in favor of the lender for default of leasehold mortgage. If the alleged default under the leasehold mortgage have not been cured, and if the Tribal Court should find for the lender, the Tribal Court shall enter judgment:

1. Foreclosing the interest in the lease of the mortgagor(s) and each other defendant named in the complaint upon whom proper and timely service has been made, including each such subordinate lienholder; and
2. Assigning such lease to the lender or the lender's assignee. [TCR 08-28]

17-219 Sale of premises ordered by Tribal Court. Whenever a petition shall be filed for the foreclosure or satisfaction of a mortgage or other debt instrument, other than a leasehold mortgage, evidencing an interest in real property or improvements, the Tribal Court shall have power to decree a sale of the pledged or mortgaged premises, or such part thereof as may be sufficient to discharge the amount due on the mortgage or other debt instrument, and the cost of suit; provided, however, that no decree of sale shall issue for ninety days following the date on which the debtor received notice of such action. [TCR 08-28]

17-220 Limitation on power of Tribal Court. When a petition shall be filed for the satisfaction of a mortgage or other debt instrument, other than a leasehold mortgage, evidencing an interest in real property or improvements thereto, the Tribal Court shall have the power only to decree and compel the delivery of the possession of the premises or the improvements to the purchaser thereof. Any action to recover a deficiency shall be brought as a separate action at law. [TCR 08-28]

17-221 Suspension of activity on debt. After a petition is filed pursuant to Section 17-216 above, and while the same is pending, and after a decree is rendered thereon, no proceedings whatever shall be had at law for the recovery of the debt secured by the leasehold mortgage, mortgage or other debt instrument or any part thereof, unless authorized by the Tribal Court. [TCR 08-28]

17-222 Inclusion of co-debtor in action. If the subject debt is secured by the obligation or other evidence of debt of any other person besides the mortgagor or debtor, the complainant may make such person a party to the action. [TCR 08-28]

17-223 Complainants; disclosure obligations. Upon filing a petition for the foreclosure or satisfaction of a leasehold mortgage, mortgage or other interest in real property or improvements thereon, the complainant shall state therein whether any proceedings have been had or are pending in any other court for the recovery of the debt secured thereby, or any part thereof, and whether such debt, or any part thereof, has been collected and paid. [TCR 08-28]

17-224 Effect of prior judgment. If it shall appear that any judgment has been obtained in a suit at law in a court of competent jurisdiction for the money demanded by such petition, or any part thereof, the Tribal Court may recognize and enter such judgment, provided the same is consistent with applicable Tribal and federal law. In any case where a prior judgment has been obtained, the Tribal Court shall not hear an action unless pursuant to an execution against the property of the defendant in such judgment the Tribal law enforcement officer or other proper officer shall have returned notice that the execution is unsatisfied in whole or in part, and that the defendant has no property whereof to satisfy such execution except the mortgage premises or improvements. [TCR 08-28]

17-225 Sale of premises by Tribal law enforcement officer or Tribal Court officer. All sales of mortgaged premises or other interests in real property, other than a leasehold mortgage; under a decree shall be made by a Tribal law enforcement officer or some other person authorized by the Tribal Court to perform such sale, and, in all cases where a Tribal law enforcement officer shall make such sale, he/she shall act in his/her official capacity as an officer of the Tribal Court. [TCR 08-28]

17-226 Publication and posting of notice of sale. The Tribal Court, in any sale of property valued at more than five hundred dollars ($500.00), shall order publication of the sale. Notice shall be published one day per week for three consecutive weeks in a newspaper published in Thurston County, Nebraska authorized to publish legal notices. In addition, notice of such sale shall be posted in the Tribal administration building continuously for three weeks prior to the date of sale. [TCR 08-28]

17-227 Content of notice. Each notice shall specify the name of the mortgagor and of the mortgagee and of the assignee of the mortgage, if any, and the original principal amount secured by said mortgage; the date of the mortgage and when and where recorded; a statement regarding the trust or restricted status, if any, of the real property, and when and where any leasehold or other interest is recorded; the amount claimed to be due thereon, and taxes, if any, paid by the mortgagee at the date of the notice; a description of the mortgaged premises, conforming substantially to that contained in the mortgage; the time and place of sale; and the time allowed by law for redemption by the mortgagor, his/her personal representative or assigns. [TCR 08-28]

17-228 Transfer of property to purchaser. Following a sale by a Tribal law enforcement officer or other Tribal court-appointed official, deed shall thereupon be executed by such individual, which shall vest in the purchaser the same estate that would have vested in the mortgagee or other lienholder if the equity of redemption had been foreclosed, and no other or greater, and such deeds shall be as valid as if executed by the mortgagor and mortgagee and shall be an entire bar against each of them and all parties to the suit in which the decree for such sale was made, and against their heirs respectively, and all persons claiming under such heirs. [TCR 08-28]

17-229 Application of proceeds to discharge of debt and ownership surplus. The proceeds of every sale made under a decree in equity shall be applied to the discharge of the debt adjudged by the Tribal Court to be due, and of the costs awarded, and, if there by any surplus, it shall be brought into Tribal Court for the use of the defendant or of the persons entitled thereto, subject to the order of the Tribal Court. [TCR 08-28]

17-230 Disposition of unclaimed surplus. If such surplus or any part thereof, shall remain in the Tribal Court for the term of three months without being applied for, the Tribal Court may direct the same to be put out at interest under the direction of the Tribal Court for the benefit of the defendant, his/her representative or assigns, to be paid to them by order of the Tribal Court. [TCR 08-28]

17-231 Cure Period. A petition for foreclosure of any mortgage having remaining interest and principal payments due thereon shall be dismissed by the Tribal Court if the defendant deposits with the

Court, at any time before the decree of sale is entered, the amount of principal payments due to date and interest due, with costs. [TCR 08-28]

17-232 Stay of proceedings upon payment by defendant of sums due. After a decree of sale is entered against a defendant, the Tribal Court shall stay proceedings under the petition if a defendant deposits with the Court the full amount of principal due to date and interest due, with costs: provided, however, the Tribal Court shall enter a decree of foreclosure and sale to be enforced by further order of the Court in the event the defendant subsequently defaults in the payment of any portion or installment of the principal, or any interest due. [TCR 08-28]

17-233 Sale of premises in parcels. If the defendant shall fail to bring into Tribal Court the amount due, with costs, or if for any other cause a decree shall pass for the complainant, the Tribal Court may direct a reference to a Tribal law enforcement officer to ascertain and report the situation of the mortgaged premises, or may determine the same on oral or other testimony, and if it shall appear that the same can be sold in parcels, without injury to the parties, the decree shall direct so much of the mortgaged premises to be sold as will be sufficient to pay the amount then due on such mortgage, with costs, and such decree shall remain a security for subsequent default. [TCR 08-28]

17-234 Order of sale upon default in payment of installments. If, in the event of a stay under Section 17-232 above, there shall be any default subsequent to such decree in the payment of any portion or installment of the principal, or any interest due upon such mortgage, the Tribal Court may, upon the petition of the complainant, by a further order, founded upon such first decree, as will be sufficient to satisfy the amount so due, with the costs of such petition and subsequent proceedings thereon, and the same proceedings may be had as often as a default shall happen. [TCR 08-28]

17-235 Sale of entire property. If in any of the foregoing cases it shall appear to the Tribal Court that the mortgaged premises or other interest in real property are so situated that a sale of the whole will be most beneficial to the parties, the decree shall, in the first instance, be entered for the sale of the whole premises or total interests accordingly. [TCR 08-28]

17-236 Disposition of proceeds of sale of entire property. In such case the proceeds of such sale shall be applied as well to the interest, portion, or installment of the principal due as toward the whole or residue of the sum secured by such mortgage or other debt instrument, and not due and payable at the time of such sale; and if such residue does not bear interest, then the Tribal Court may direct the same to be paid with a rebate of the legal interest, for the time during which such residue shall not be due and payable; or the Tribal Court may direct the balance of the proceeds of such sale, after paying the sum due, with costs, to be put out at interest, for the benefit of the complainant, to be paid to him/her as the installments or portions of the principal or interest may become due, and the surplus for the benefit of the defendant, his/her representative, or assigns, to be paid to them on the order of the Tribal Court. [TCR 08-28]

17-237 Actions to be taken upon satisfaction or payment.

1. In all cases of foreclosure of mortgages or other interest in real property, it shall be the duty of the clerk of the Tribal Court, on the satisfaction or payment of the amount of the decree, to forward to the register of deeds of Thurston County, Nebraska, if appropriate, the Aberdeen Area Land Titles and Records offices or the secretary, as appropriate, a certificate setting forth the names of parties, plaintiff and defendant, descriptions of the premises mentioned in the decree, for which certificate such clerk shall collect a fee of three dollars ($3.00), which amount shall be taxed as part of the costs in the case, and said sum shall be paid to the clerk of the Tribal Court.

2. It shall be the duty of the clerk of the Tribal Court to forward to the Tribal credit department a copy of the certificate specified in subsection (1) of this section. [TCR 08-28]

17-238 Fee lands not affected. Foreclosure actions relating to fee lands located within the boundaries of the Winnebago reservation shall be governed by the laws of the State of Nebraska; provided, however, the chairman of the Winnebago Tribe shall receive notice of all such actions by first-class mail. [TCR 08-28]

17-239 Fee land foreclosures. In the event any Winnebago Tribal member of any Tribal entity possesses an interest in fee land located within the boundaries of the Winnebago reservation that is the subject of a foreclosure action in state court, such individual may apply to the Tribal Court for an order directing a Tribal law enforcement officer or other Tribal court-appointed officer to take such actions as necessary to assist the state officers and/or to facilitate the foreclosure action. [TCR 08-28]

TITLE 18
GUARDIANSHIP AND CONSERVATORSHIP
(As adopted March 9, 2011)

SUMMARY OF CONTENTS

SECTION	ARTICLE-PAGE
1. TABLE OF REVISIONS	ii
2. TABLE OF CONTENTS	iii
3. ARTICLE 1: PRELIMINARY PROVISIONS	1-1
4. ARTICLE 2: PROCEDURES AND PROVISIONS APPLICABLE TO GUARDIANSHIP AND CONSERVATORISHIPS	2-1
5. ARTICLE 3: GUARDIANSHIP	3-1
6. ARTICLE 4: CONSERVATORSHIP	4-1

TITLE 18
TABLE OF REVISIONS

The following table is included in this title as a guide for determining whether each article properly reflects the current version. This table will be updated with the revision of each article.

Through usage and supplementation, pages in bound titles can be inserted and removed when sections are revised on an article-by-article basis. This table should be placed before the Table of Contents in the title.

The "Article" column lists each article, and the "Section" column lists any corresponding sections that have been revised, in sequence. The "Revised Date" column reflects the effective date of the revision (e.g., "6/20/15"). If an article is not listed in the table, it has not been revised since the December 2015 Winnebago Tribal Code update and distribution.

Article	**Section**	**Revised Date**

TITLE 18
GUARDIANSHIP AND CONSERVATORSHIP

(As adopted March 9, 2011)

TITLE 18
ARTICLE 1
PRELIMINARY PROVISIONS

18-101 Citation.
18-102 Declaration of policy.
18-103 Authority.
18-104 Jurisdiction.
18-105 Civil action.
18-106 Definitions.
18-107 Severability.
18-108 Construction.
18-109 Applicability of Rules of Civil Procedure.
18-110 Penalties.
18-111 Effective Date.

TITLE 18
ARTICLE 2
PROCEDURES AND PROVISIONS APPLICABLE TO GUARDIANSHIPS AND CONSERVATORSHIPS

18-201 Pleadings.
18-202 Reports.
18-203 Combining Petitions.
18-204 Same person as guardian and conservator.
18-205 Service.
18-206 Waiver of notice.
18-207 Proof of Service.
18-208 Notice – commencement of action.
18-209 Notice of hearing or trial.
18-210 Hearing procedure.
18-211 Burden of persuasion; General provisions.
18-212 Representation.
18-213 Preference for appointment of guardian and/or conservator; minor.
18-214 Preference for appointment of guardian and/or conservator; adult.
18-215 Affidavit of guardian and/or conservator.
18-216 Letters of guardian or conservator issued.
18-217 Oath – acceptance of appointment.
18-218 Effect of appointment – ward.
18-219 Legal effect of appointment.
18-220 Compensation of guardian or conservator.
18-221 Self-dealing by guardian or conservator.
18-222 Liability of guardians and conservators.
18-223 Tort liability of guardians or conservators.
18-224 Cause for termination; general.
18-225 Cause for termination; restoration of capacity.
18-226 Cause for termination; resignation or removal proceedings.
18-227 Appointment of successor guardian or conservator.
18-228 Powers of successor guardian or conservator.
18-229 Limit on application to terminate.

TITLE 18
ARTICLE 3
GUARDIANSHIP

18-301 Natural guardians; parental preference.
18-302 Petition for Appointment of Guardian.
18-303 Notification of Guardianship Powers.
18-304 Powers and duties of Guardian; general.
18-305 Powers and duties of Guardian; subject to approval of the Court.
18-306 Powers and duties of Guardian; other.
18-307 Powers and duties of guardian of a minor.
18-308 Qualification of guardian.
18-309 Appointment of guardian based on incompetency.
18-310 Appointment of guardian based on minority.
18-311 Appointment of temporary guardian.
18-312 Bond.
18-313 Reporting requirements – guardian.
18-314 Guardian's compensation.
18-315 Property delivered – penalty.
18-316 Testamentary appointment of guardian for incapacitated person.
18-317 Termination of guardianship for incapacitated person; liability for prior acts; obligation to account.
18-318 Testamentary appointment of guardian of minor.
18-319 Objection by minor of fourteen or older to testamentary appointment.

TITLE 18
ARTICLE 4
CONSERVATORSHIP

18-401 Petition for appointment of conservatorship.
18-402 Permissible court orders.
18-403 Notification of conservatorship powers.
18-404 Appointment of conservator.
18-405 Appointment of temporary and/or limited conservator.
18-406 Duties of conservator.
18-407 Powers of conservator without further Court order.
18-408 Powers of conservator subject to the approval of the Court.
18-409 Powers of ward.
18-410 Qualification of conservator.
18-411 Bond.
18-412 Amount of bond.
18-413 Bond – approval by Clerk.
18-414 Review by Clerk when inventory is filed.
18-415 Bond changed.
18-416 Obligees of bond – joint and several liability.
18-417 Order for delivery.
18-418 Inventory – reporting requirements.
18-419 Title to ward's property.
18-420 Conservator's right to possession.
18-421 Presumption of fraud.
18-422 Claims against ward, conservatorship, or conservator in that capacity.
18-423 Forms and verification of claims filed with Clerk.
18-424 Filing of claim required.
18-425 Compelling payment of claims.
18-426 Allowance by conservator.
18-427 Execution and levy prohibited.
18-428 Claims of conservators.
18-429 Claims not filed.
18-430 Liens not affected by failure to claim.
18-431 Pending actions.
18-432 General denial of claims.
18-433 Disallowance of claim by conservator.
18-434 Notice of disallowance and request for hearing.
18-435 Notice of disallowance; proof of service.
18-436 Notice of disallowance; claims barred after twenty days.
18-437 Request for hearing by claimant.
18-438 Applicability of Rules of Civil Procedure to hearing on claim.
18-439 Payment of claims in insolvent conservatorships.
18-440 Conservator may make gifts.
18-441 Assets exhausted.
18-442 Accounting to ward upon termination – notice.
18-443 Delivery of assets.
18-444 Discharge of conservator and release of bond.
18-445 Removal of conservator by Court.
18-446 Property delivered – penalty.

TITLE 18
GUARDIANSHIP AND CONSERVATORSHIP

ARTICLE 1
PRELIMINARY PROVISIONS

18-101 Citation.
18-102 Declaration of policy.
18-103 Authority.
18-104 Jurisdiction.
18-105 Civil action.
18-106 Definitions.
18-107 Severability.
18-108 Construction.
18-109 Applicability of Rules of Civil Procedure.
18-110 Penalties.
18-111 Effective Date.

18-101 Citation. This Code shall be known and may be cited as the "Guardianship and Conservatorship Code." [TCR 11-72]

18-102 Declaration of policy. The Winnebago Tribe of Nebraska recognizes the need to provide mechanisms for intervening in the lives of vulnerable persons who are incapacitated either by disability or minority in order to promote the peace, safety, morals and general welfare of the Tribe. [TCR 11-72]

18-103 Authority. This Code is adopted pursuant to the inherent sovereign powers of the Winnebago Tribe of Nebraska and the Constitution of the Winnebago Tribe of Nebraska, as amended. [TCR 11-72]

18-104 Jurisdiction. The Winnebago Tribal Court shall have the power and duty to appoint guardians and conservators, to grant letters of conservatorship and guardianship, to administer, settle and close conservatorship and guardianship proceedings, when:

1. The proposed ward or the proposed guardian or conservator is an enrolled member or eligible for enrollment in the Winnebago Tribe of Nebraska; or
2. When the proposed ward or the proposed guardian or conservator resides on the reservation.

The Winnebago Tribal Court shall have exclusive and continuing jurisdiction over the proceeding until it is terminated by the Court or the appointment or order expires by its own terms. [TCR 11-72]

18-105 Civil action. Actions and proceedings arising pursuant to this Guardianship and Conservatorship Code are civil actions. [TCR 11-72]

18-106 Definitions. Where a term is not defined in this Code, it shall be given its ordinary meaning, unless otherwise defined in the Winnebago Tribal Code. The Definitions below apply to this Code only:

1. "Clerk" means the Clerk of the Winnebago Tribal Court.
2. "Conservator" means a person appointed by the Court to have the custody and control of the property of a ward under the provisions of this Code.
3. "Court" means the Tribal Court of the Winnebago Tribe of Nebraska.
4. "Estate" means the real and personal property of a ward.
5. "Family member" means spouse, children, siblings, parents, uncles, aunts, nieces, nephews, grandparents, grandchildren, mother-in-law, father-in-law, sister-in-law, brother-in-law, son-in-law, and daughter-in-law of the ward.

6. "Functional limitations" means the behavior or condition of a person which impairs the person's ability to care for the person's personal safety or to attend to or provide for necessities for the person.
7. "Guardian" means the person appointed by the Court to have the custody of the person of the ward under the provisions of this Guardianship and Conservatorship Code.
8. "Hearing" means a proceeding before the Court.
9. "Incapacitated" means the condition of any person who has been adjudicated by a court to meet at least one of the following conditions:
    a. To have a decision-making capacity which is so impaired that the person is unable to care for the person's personal safety or to attend to or provide for necessities for the person such as food, shelter, clothing, or medical care, without which physical injury or illness may occur.
    b. To have a decision-making capacity which is so impaired that the person is unable to make, communicate, or carry out important decisions concerning the person's financial affairs.
    c. To have a decision-making capacity which is so impaired that both paragraphs 1 and 2 are applicable.
10. "Letters" means and includes letters of guardianship and/or letters of conservatorship.
11. "Person" includes agencies and departments of the Winnebago Tribe of Nebraska, including but not limited to Winnebago Child and Family Services and includes other natural persons, and entities, agencies, and departments, whether public or private, if the other natural person, entity, agency or department is qualified to act as a guardian and/or conservator and has no proprietary or legal interest in an organization which provides direct services to the ward and if authorized to act in a fiduciary capacity and otherwise found to be suitable by the Court. Notwithstanding the foregoing, Winnebago Child and Family Services and any agency and department of the Winnebago Tribe of Nebraska are a person eligible to be appointed as guardian and conservator pursuant to this Code.
12. "Property" means and includes both real and personal property.
13. "Reservation" shall mean all the territory within the exterior boundaries of the Winnebago Indian Reservation (including Flowers Island and other Tribal land located east of the Missouri River) as set forth in the Winnebago Treaty of March 8, 1865 (14 Stat. 671) and the twenty (20) sections included in the strip purchased in Nebraska for Wisconsin Winnebagos (18 Stat. 170), June 22, 1874 and such lands as may be added thereto by Congress or the Tribe or reaffirmation of the title of lands through the Courts to the Tribe, except as otherwise provided by law. This definition of reservation includes all rights-of-way, waterways, streams, lakes, highways, railroad rights-of-way, mineral rights, etc.
14. "Trial" means a proceeding before the Court.
15. "Ward" means a person who has a guardian or conservator appointed by the Court to care for and take responsibility for that person or that person's financial and other affairs. [TCR 11-72]

18-107 Severability. If any provision of this Code or its application is held to be invalid, the remainder of the Code, or the application of the provision to other persons or circumstances, is not affected. [TCR 11-72]

18-108 Construction.

1. Nothing in this Code shall constitute a waiver, cession, or diminishment of sovereign immunity or any sovereign power of the Tribe.
2. Inclusion or reference to language, definitions, procedures, or other statutory or administrative provisions of other jurisdictions in this Code shall not be deemed an action or deferring to or consenting to such other jurisdiction by the Tribe. [TCR 11-72]

18-109 Applicability of Rules of Civil Procedure. All actions triable in guardianship and/or conservatorship shall be governed by the Rules of Civil Procedure of the Winnebago Tribe of Nebraska. [TCR 11-72]

18-110 Penalties. Any guardian or conservator who steals, diverts or grossly abuses the funds or property of a ward shall additionally be subject to civil sanctions including a penalty not to exceed $5,000.00 and an order of restitution by the Court. [TCR 11-72]

18-111 Effective Date. The Code shall be effective as of the date of adoption by the Tribal Council. [TCR 11-72]

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GUARDIANSHIP AND CONSERVATORSHIP

ARTICLE 2
PROCEDURES AND PROVISIONS APPLICABLE TO GUARDIANSHIPS AND CONSERVATORSHIPS

18-201 Pleadings.
18-202 Reports.
18-203 Combining Petitions.
18-204 Same person as guardian and conservator.
18-205 Service.
18-206 Waiver of notice.
18-207 Proof of Service.
18-208 Notice – commencement of action.
18-209 Notice of hearing or trial.
18-210 Hearing procedure.
18-211 Burden of persuasion; General provisions.
18-212 Representation.
18-213 Preference for appointment of guardian and/or conservator; minor.
18-214 Preference for appointment of guardian and/or conservator; adult.
18-215 Affidavit of guardian and/or conservator.
18-216 Letters of guardian or conservator issued.
18-217 Oath – acceptance of appointment.
18-218 Effect of appointment – ward.
18-219 Legal effect of appointment.
18-220 Compensation of guardian or conservator.
18-221 Self-dealing by guardian or conservator.
18-222 Liability of guardians and conservators.
18-223 Tort liability of guardians or conservators.
18-224 Cause for termination; general.
18-225 Cause for termination; restoration of capacity.
18-226 Cause for termination; resignation or removal proceedings.
18-227 Appointment of successor guardian or conservator.
18-228 Powers of successor guardian or conservator.
18-229 Limit on application to terminate.

18-201 Pleadings. All pleadings, hearing, and the trial of the case shall be governed by the Rules of Civil Procedure of the Winnebago Tribe of Nebraska. The cause shall be tried as a civil action, and no party shall be entitled to a jury trial. [TCR 11-72]

18-202 Reports. All petitions, reports, and applications for orders in guardianship and conservatorship proceedings must be in writing, verified, acknowledged or certified, and self-explanatory. [TCR 11-72]

18-203 Combining Petitions. The petitions for the appointment of a guardian and a conservator may be combined and the cause tried in the same manner as a petition for the appointment of a conservator. [TCR 11-72]

18-204 Same person as guardian and conservator. The same person may be appointed to serve as both guardian and conservator. [TCR 11-72]

18-205 Service. Service of process of the petition to commence a proceeding for guardianship or conservatorship shall be effected as set forth in the Rules of Civil Procedure and shall be served on the person designated in this Code. [TCR 11-72]

18-206 Waiver of notice. Any notice required under this Code or by order of the Court may be waived in writing by the person, guardian or conservator entitled to receive such notice. [TCR 11-72]

18-207 Proof of Service. Proof of service of any notice required by this Code or by order of the Court, including those by publication, shall be filed with the clerk. [TCR 11-72]

18-208 Notice – commencement of action.

1. If the proposed ward is an adult, notice of the filing of the petition shall be served upon the proposed ward in the manner of an original notice and the content of the notice is governed by the Rules of Civil Procedure governing original notice.
   a. Notice shall also be served on the ward's spouse. If the ward has no spouse, notice shall be served upon the ward's adult children, if any.
   b. If no other person is notified under (1)(a) of this Section, then notice shall be served on at least one of the closest adult relatives of the ward or person alleged to be incapacitated, if any can be found.
2. If the proposed ward is a minor, notice of the petition shall be served upon the minor, if the minor is 14 or more years old, in the manner of an original notice and the content of the notice is governed by the Rules of Civil Procedure governing original notice. Notice shall also be served on any living parent of the minor, the legal guardian(s) of the minor, if any, and the person who has had the principal care and custody of the minor during the 60 days preceding the date of the petition.
3. Proof of service shall be made by affidavit, which affidavit shall list all of the documents that were served.
4. In addition to notice of the filing of a petition, the notice required to be served upon the person alleged to be incapacitated shall list the following rights of the person:
   a. The right to request the appointment of a legal counsel;
   b. The right to present evidence in his or her own behalf;
   c. The right to request that the power of the guardian, if appointed, be limited by the Court;
   d. The right to be notified regarding how to contact the temporary guardian if a temporary guardian is appointed;
   e. The right to compel attendance of witnesses;
   f. The right to cross-examine witnesses, including the Court-appointed physician;
   g. The right to appeal any final order; and
   h. The right to request a hearing closed to the public. [TCR 11-72]

18-209 Notice of hearing or trial.

1. Unless otherwise provided in this Code, the Court shall fix the time and place of hearing or any matter requiring notice and shall prescribe the time and manner of service of the notice of such hearing.
2. In the case of proceedings against unknown persons or persons whose address or whereabouts are unknown, the Court may, after application by the party seeking to serve by publication, prescribe that notice of hearing or trial may be served by publication within the time and manner provided by the Rules of Civil Procedure.
3. In its discretion, the Court's notice may direct each interested party to file the party's objections/responses thereto in writing, if any, within 20 days after the notice is served upon the party. Said notice shall be served upon each interested party in compliance with the Rules of Civil Procedure. In the event objections are timely filed, the Court shall fix the time and place of the hearing for the judicial determination of the issues raised. [TCR 11-72]

18-210 Hearing procedure.

1. Upon the receipt of a petition for the appointment of a guardian and/or a conservator, the Court shall set a date for hearing on the matters alleged in the petition.
2. The Court may appoint an attorney to represent the proposed ward in the proceeding.
   a. The Court may appoint a guardian ad litem to advocate for the best interest of the proposed ward.
3. If the petition for the appointment of a conservator and/or guardian is for reasons other than minority, the Court may direct the proposed ward to be examined by a physician or other professional service provider designated by the Court. Such physician or professional service provider shall prepare a written report about the proposed ward's mental and physical condition and file it with the Court.
4. A hearing shall be held to determine whether a guardianship and/or conservatorship should be established. The proposed ward, his or her attorney, and all interested persons and their attorneys shall attend the hearing in order to assist the judge with making the decision.
5. In proceedings to establish, modify, or terminate a guardianship or conservatorship, in determining if the proposed ward is incapacitated, the Court shall consider credible evidence from any source.
6. The Court shall make a final determination regarding the need for appointment of a guardian or conservator in writing. The Court shall make findings of fact to support any powers conferred on the guardian or conservator.
7. The Court shall make the appointment of a guardian or conservator as appropriate and/or shall make any other appropriate order as needed.
8. Unless otherwise noted, the Rules of Evidence shall apply. [TCR 11-72]

18-211 Burden of persuasion; General provisions.

1. Determination of competency of the proposed ward and the need for appointment of guardian or conservator shall be supported by clear and convincing evidence**.**
2. The burden of persuasion is on the petitioner in an initial proceeding to appoint a guardian or conservator.
3. In a proceeding to terminate a guardianship or conservatorship, the burden of persuasion is on the guardian or conservator to show by clear and convincing evidence that the guardianship or conservatorship should not be terminated.
4. In a proceeding to modify a guardianship or conservatorship, the burden of persuasion is on the petitioner to show by clear and convincing evidence that the guardianship or conservatorship should not be modified. [TCR 11-72]

18-212 Representation.

1. In a proceeding for the appointment of a guardian and/or conservator:
   a. If the proposed ward is an adult, the proposed ward is entitled to representation. Upon filing of the petition, or as soon thereafter as reasonably possible, the Court shall appoint an attorney to represent the proposed ward if the ward has not retained counsel and shall provide for notice of the appointment of counsel.
   b. If the proposed ward is a minor, the Court shall determine in its sole discretion whether, under the circumstances of the case, the proposed ward is entitled to representation. The determination regarding representation may be made with or without notice to the proposed ward, as the Court deems necessary. If the Court determines that the proposed ward is entitled to representation, the Court shall appoint an attorney to represent the proposed ward and provide for notice of appointment of counsel.

c. The Court may take action under paragraph (a) or (b) above prior to the service of the original notice upon the proposed ward.
d. The Court may reconsider the determination regarding representation upon application by any interested person.
e. The Court may discharge the attorney appointed by the Court if it appears upon the application of the proposed ward or any other interested person that the ward has privately retained an attorney who has filed an appearance on behalf of the proposed ward.

2. The Court shall ensure that all proposed wards entitled to representation have been provided with notice of the right to representation and the right to be personally present at all proceedings and shall make findings of fact in any order of disposition setting out the manner in which notification was provided.
3. The cost of Court-appointed or privately retained counsel for the ward shall be paid by the ward or the estate of the ward, except if the ward does not have sufficient assets and funds to pay the cost of legal counsel, the Court shall pay such reasonable costs.
4. An attorney representing a ward shall:
   a. Ensure that the proposed ward has been properly advised of the nature and purpose of the proceeding.
   b. Ensure that the proposed ward has been properly advised of the ward's rights in a guardianship and/or conservatorship proceeding.
   c. Personally interview the proposed ward.
   d. File a written report stating whether there is a return on file showing that proper service on the proposed ward has been made and also stating that specific compliance with paragraphs (1) through (3) immediately above has been made or stating the inability to comply by reason of the proposed ward's condition.
   e. Represent the proposed ward.
   f. Ensure that the guardianship and/or conservatorship procedures conform to the statutory and due process requirements of the Rules of Civil Procedure.
   g. Inform the proposed ward of the effects of the order entered for appointment of guardian and/or conservator.
   h. Advise the ward of the ward's right to petition for modification or termination of the guardianship and/or conservatorship.
   i. Advise the ward of the rights retained by the ward. [TCR 11-72]

18-213 Preference for appointment of guardian and/or conservator; minor.

1. Subject to any other provision set forth herein, the parents or legal guardian(s) of a minor, if qualified and suitable, shall be preferred over all others for appointment as guardian and/or conservator.
2. Preference shall then be given to any person, if qualified and suitable, nominated as guardian and/or conservator for a minor child by a will executed by the parent having custody of a minor child, any qualified and suitable person requested by a minor 14 years of age or older, or to any family member.
3. Subject to these preferences, the Court shall appoint as guardian and/or conservator a qualified and suitable person who is willing to serve in that capacity and the preferences herein are recommended but not mandatory. [TCR 11-72]

18-214 Preference for appointment of guardian and/or conservator; adult. The spouse of an adult, if qualified and suitable, shall be preferred over all others for appointment as guardian and/or conservator. Preference shall then be given to any adult child and then to any family member, if qualified and suitable, nominated as guardian and/or conservator for an adult. Subject to these preferences, the Court shall

appoint as guardian and/or conservator a qualified and suitable person who is willing to serve in that capacity. [TCR 11-72]

18-215 Affidavit of guardian and/or conservator. Prior to being appointed as a guardian or conservator, and prior to issuance of letters of guardianship or conservatorship, the proposed appointee shall complete, sign under oath, and file with the Clerk, an affidavit stating whether the proposed appointee has:

1. Ever been convicted of a felony in any jurisdiction;
2. Acted as guardian or conservator in any jurisdiction for any person within three years of the filing of the petition in this matter;
3. Reviewed and has a working knowledge of the powers and duties imposed on a guardian and/or conservator, as applicable;
4. Acted in a fiduciary capacity pursuant to a power-of-attorney for any person in any jurisdiction within three years of the filing of the petition in this matter;
5. Ever been listed in an elder abuse or sex offender registry in any jurisdiction at any time and whether any enterprise in which the proposed appointee has an interest has ever been listed in an elder abuse or sex offender registry or in any jurisdiction at any time;
6. If appointed as a guardian or conservator for any person within three years prior to the filing of the petition in this case, whether the proposed appointee in this case has ever failed to file any Report of Guardian or Conservator in any jurisdiction later than three months after the date the report was due;
7. Ever been removed as a guardian or conservator for any person in any jurisdiction at any time;
8. Ever received anything of value exceeding a total of $100 in any one year, by gift, devise, or bequest from any individual, or estate of an individual, to whom the proposed appointee is not related by blood or marriage and for whom the enterprise and/or proposed appointee served at any time as guardian, conservator, trustee, or attorney-in-fact;
9. Been named as a personal representative, trustee or other type of beneficiary of any individual to whom the proposed appointee is not related by blood or marriage and for whom the proposed appointee served as guardian, conservator, trustee, or attorney-in-fact;
10. Any interest in any enterprise providing housing, health care, or comfort care services to any individual;
11. The proposed appointee shall state the nature of his/her relationship with the proposed ward. [TCR 11-72]

18-216 Letters of guardian or conservator issued. Upon the guardian or conservator filing an affidavit of guardian or conservator pursuant to Section 18-215, and filing proof of bond if any bond is required, the Clerk shall issue letters under the seal of the Court giving the guardian or conservator the power authorized by law with said powers to be enumerated in the letters. [TCR 11-72]

18-217 Oath – acceptance of appointment. Every guardian and conservator, before entering upon the duties herein, shall subscribe an oath or certify under penalty of perjury that the guardian or conservator will faithfully discharge the duties imposed by law according to the best of the guardian's or conservator's ability. [TCR 11-72]

18-218 Effect of appointment – ward. The appointment of a guardian or conservator shall not constitute an adjudication that the ward is of unsound mind. [TCR 11-72]

18-219 Legal effect of appointment. By qualifying as guardian and/or conservator, any person, whether a resident or nonresident of the reservation, whether a Tribal member or non-tribal member, submits to the jurisdiction of the Tribal Court, and in addition, shall be deemed to agree that:

1. All property coming into the guardian's and/or conservator's control or possession as a result of the guardianship and/or conservatorship appointment is subject to the jurisdiction of the Tribal Court; and
2. The guardian and/or conservator is subject to all orders entered by the Court in the proceedings in which the guardian and/or conservator is serving and that notices served upon the guardian and/or conservator with respect thereto in compliance with the procedure prescribed in this Code shall have the same force and effect as if such service had been personally made upon the guardian and/or conservator within the jurisdiction and boundaries of the reservation.
3. The guardian and/or conservator shall be subject to the jurisdiction of the Tribal Court in all actions and proceedings against the guardian and/or conservator arising from or growing out of the guardianship and/or conservatorship relationship and activities, and that the service process in such actions and proceedings may be made upon the guardian and/or conservator by serving the original notice upon the guardian and/or conservator outside the reservation and that such service shall have the same force and effect as though the service had been personally made upon the guardian and/or conservator within the reservation. [TCR 11-72]

18-220 Compensation of guardian or conservator. The guardian or conservator may be compensated from the estate of the ward at such reasonable amount as may be determined by the Court for services rendered and for good cause shown upon application to the Court and after hearing and determination and order by the Court as to said request for compensation. [TCR 11-72]

18-221 Self-dealing by guardian or conservator. No guardian or conservator shall in any manner engage in self-dealing, except on order of the Court after notice to all interested persons, and shall derive no profit other than the amounts to be paid to said conservator or guardian after application therefore by the guardian or conservator seeking an order under the provisions of this Section, shall specify in detail the reasons for such application and the facts justifying the requested order. [TCR 11-72]

18-222 Liability of guardians and conservators. Guardians and conservators shall not be held personally liable for action or omission taken or made in the official discharge of the guardian's or conservator's duties, except for any of the following:

1. A breach of fiduciary duty imposed by this Code.
2. Willful or wanton misconduct in the official discharge of the guardian's or conservator's duties. [TCR 11-72]

18-223 Tort liability of guardians and conservators. The fact that a person is a guardian or conservator shall not in itself make the person personally liable for damages for the acts of the ward. [TCR 11-72]

18-224 Cause for termination; general. A guardianship shall cease and a conservatorship shall terminate upon the occurrence of any of the following circumstances:

1. The death of the ward;
2. The restoration of capacity of the ward; or
3. Determination by the Court, after notice and hearing, that the conservatorship or guardianship is no longer necessary for any reason. [TCR 11-72]

18-225 Cause for termination; restoration of capacity.

1. A guardian or conservator of a minor not otherwise incapacitated, or the minor him/herself, may petition the Court on or after the date the minor reaches the age of majority, is adopted, or becomes married to have the guardian or conservator discharged and the estate turned over to the minor. The Court shall grant such discharge with or without notice and hearing, upon the receipt of sufficient, competent evidence that the minor has reached the age of majority unless the minor appears to be otherwise incapacitated, in which case a hearing with notice, shall be held to determine such fact.
2. A guardian or conservator of an incapacitated or another person may petition the Court for a determination of the ward's restoration to capacity and for discharge of the guardian or conservator. The Court shall hold a hearing after such notice to known interested parties as the Court shall direct, and receive evidence, both of a medical nature and otherwise, of the ward's competency. If it is found that the ward is of sound mind and capable of taking care of him/herself and his/her property, his/her restoration to capacity shall be adjudged and his/her guardianship or conservatorship and guardian or conservator discharged.
   a. In such a proceeding to terminate a guardianship or a conservatorship, the ward shall make a prima facie showing that the ward has some decision-making capacity.
   b. Once the ward has made the showing, the guardian or conservator has the burden to prove by clear and convincing evidence that the guardianship or conservatorship should not be terminated. [TCR 11-72]

18-226 Cause for termination; resignation or removal proceedings.

1. Any person interested in the welfare of a ward, or the ward if fourteen years of age or older, may petition for removal of a guardian or conservator on the ground that removal would be in the best interest of the ward. A guardian or conservator may petition for permission to resign.
2. A petition for removal or for permission to resign may, and if the guardian or conservator were the sole or last surviving guardian or conservator, shall include a request for appointment of a successor guardian or conservator.
3. After notice and hearing on a petition for removal or for permission to resign, the Court may terminate the guardianship or conservatorship and make any further order that may be appropriate.
4. Where the guardian or conservator was the sole or last surviving guardian or conservator, the Court may determine that termination of the guardianship or conservatorship is not effective until a successor guardian or conservator has been appointed. [TCR 11-72]

18-227 Appointment of successor guardian or conservator. When any guardian or conservator fails to qualify, dies, is removed by the Court, or resigns, and such resignation is accepted by the Court, the Court may, and if the guardian or conservator were the sole or last surviving guardian or conservator, the Court shall, after notice and a hearing, appoint another guardian or conservator in the former's place. [TCR 11-72]

18-228 Powers of successor guardian or conservator. When a successor guardian or conservator is appointed, the successor shall have all the rights, powers, titles and duties of the predecessor, except that the successor shall not exercise powers given in any order creating the power that by its express terms are personal to the guardian or conservator therein designated. [TCR 11-72]

18-229 Limit on application to terminate. If any petition for terminating such guardianship or conservatorship shall be denied, no other petition shall be filed therefor until at least six months shall have elapsed since the denial of the former one unless the termination is on the basis of majority. [TCR 11-72]

TITLE 18
GUARDIANSHIP AND CONSERVATORSHIP

ARTICLE 3
GUARDIANSHIP

18-301 Natural guardians; parental preference.
18-302 Petition for Appointment of Guardian.
18-303 Notification of Guardianship Powers.
18-304 Powers and duties of Guardian; general.
18-305 Powers and duties of Guardian; subject to approval of the Court.
18-306 Powers and duties of Guardian; other.
18-307 Powers and duties of guardian of a minor.
18-308 Qualification of guardian.
18-309 Appointment of guardian based on incompetency.
18-310 Appointment of guardian based on minority.
18-311 Appointment of temporary guardian.
18-312 Bond.
18-313 Reporting requirements – guardian.
18-314 Guardian's compensation.
18-315 Property delivered – penalty.
18-316 Testamentary appointment of guardian for incapacitated person.
18-317 Termination of guardianship for incapacitated person; liability for prior acts; obligation to account.
18-318 Testamentary appointment of guardian of minor.
18-319 Objection by minor of fourteen or older to testamentary appointment.

18-301 Natural guardians; parental preference.

1. The father and mother are the natural guardians of their minor children and are duly entitled to their custody and to direct their education being themselves competent to transact their own business and not otherwise unsuitable, and if in the best interest of the minor child. If either dies or is disqualified from acting, or has abandoned his or her family, the guardianship devolves upon the other except as otherwise provided in this Section.
2. In the appointment of a parent as a guardian when the other parent has died and the child was born out of wedlock, the Court shall consider the wishes of the deceased parent as expressed in a valid will executed by the deceased parent. If in such valid will the deceased parent designates someone other than the other natural parent as guardian for the minor children, the Court shall take into consideration the designation by the deceased parent. In determining whether or not the natural parent should be given priority in awarding custody, the Court shall also consider the natural parent's acknowledgment of paternity, payment of child support, and whether the natural parent is a fit, proper, and suitable custodial parent for the child.
3. The Court may appoint a standby guardian for a minor whose parent is chronically ill or near death. The appointment of a guardian under this subsection does not suspend or terminate the parent's parental rights of custody to the minor. The standby guardian's authority would take effect, if the minor is left without a remaining parent, upon (1) the death of the parent, (2) the mental incapacity of the parent, or (3), the physical debilitation and consent of the parent.
4. The Court may appoint a guardian for a minor if all parental rights of custody have been terminated or suspended by prior or current circumstances or prior Court order.
5. A biological parent has a superior right to legal and physical custody of that parent's child over a non-parent.
    a. A biological parent will prevail over a non-parent unless the biological parent is shown to be unfit.
    b. A biological parent is deemed "unfit" if a personal deficiency or incapacity which has prevented, or will probably prevent, performance of a reasonable parental obligation in

child rearing and which has caused, or probably will result in, detriment to a child's well-being. [TCR 11-72]

18-302 Petition for Appointment of Guardian. Any person may file with the clerk a verified petition for the appointment of a guardian. The petitioner shall state the following information so far as known to the petitioner.

1. The name, age and physical address of the proposed ward and post office box address if there is no physical address where mail is regularly delivered.
2. The petitioner's relationship to the proposed ward.
3. That the proposed ward is in either of the following categories and the factual basis in support thereof;
   a. Is a person whose decision-making capacity is so impaired that the person is unable to care of the person's personal safety or to attend to or provide for necessities of the person such as food, shelter, clothing, or medical care, without which physical injury or illness might occur.
   b. Is a minor and the parent(s) or legal guardian died, became disqualified from acting, or has abandoned the minor.
4. The name and physical address of the proposed guardian and post office box address if there is no physical address where mail is regularly delivered, and that such person is qualified to serve in that capacity.
5. That the proposed ward is an enrolled member of the Winnebago Tribe of Nebraska, or is eligible for enrollment, or resides within the reservation, or that the proposed guardian is an enrolled member of the Winnebago Tribe of Nebraska, or is eligible for enrollment, or resides within the reservation, and that the proposed ward's best interests require the appointment of a guardian.
6. The name and address of the person or institution, if any, having the care, custody or control of the proposed ward. [TCR 11-72]

18-303 Notification of Guardianship Powers. In a proceeding for the appointment of a guardian, the proposed ward shall be given written notice by the Court or the person designated by Court order, which advises the proposed ward that if a guardian is appointed, the guardian may, without Court approval, provide for the care of the ward, manage the ward's personal property and effects, assist the ward in developing self-reliance and receive professional care, counseling, treatment or services as needed, and ensure that the ward receives necessary emergency medical services. The notice shall also advise the proposed ward that, upon the Court's approval, the guardian may change the ward's permanent residence to a more restrictive residence, and arrange for major elective surgery or any other non-emergency major medical procedure. The notice shall clearly advise the proposed ward of the right to counsel and the potential deprivation of the proposed ward's civil rights. The notice shall also state that the proposed ward may use the ward's own attorney instead of an attorney appointed by the Court. In an involuntary guardianship proceeding, the notice shall be served upon the proposed ward with the notice of the filing of the petition as provided in Section 18-208. [TCR 11-72]

18-304 Powers and duties of Guardian; general.

1. Except as otherwise specifically ordered or limited by the Court, a guardian of an incapacitated person has the same powers, rights, and duties respecting his or her ward that a parent has respecting his or her unemancipated minor child, except that a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship. In particular, and without qualifying the foregoing, a guardian has the following powers and duties, except as may be specified by order of the Court:

a. To the extent consistent with the terms of any Court order relating to detention or commitment of the ward, the guardian is entitled to custody of the person of the ward and may establish the ward's place of abode within or without the reservation. When establishing the ward's place of abode, a guardian shall make every reasonable effort to ensure that the placement is on the least restrictive alternative. A guardian shall authorize a placement to a more restrictive environment only after careful evaluation of the need for such placement. The guardian may obtain a professional evaluation or assessment that such placement is in the best interest of the ward.

b. If entitled to custody of the ward, the guardian shall make provision for the care, comfort, and maintenance of the ward and, whenever appropriate, arrange for the training and education of the ward. Without regard to custodial rights of the ward's person, he or she shall take reasonable care of his or her ward's clothing, furniture, vehicles, and other personal effects and commence protective proceedings if other property of his or her ward is in need of protection.

c. A guardian may give any consents or approvals that may be necessary to enable the ward to receive medical, psychiatric, psychological, or other professional care, counsel, treatment, or service. When making such medical or psychiatric decisions, the guardian shall consider and carry out the intent of the ward expressed prior to incompetency to the extent allowable by law.

d. If no conservator for the estate of the ward has been appointed, he or she may:

   i. Institute proceedings to accompany any person under a duty to support the ward or to pay sums for the welfare of the ward to perform his or her duty;

   ii. Receive money and tangible property deliverable to the ward and apply the money and property for support, care, and education of the ward; but he or she may not use funds from his or her ward's estate for room and board which he or she, his or her spouse, parent, or child has furnished the ward unless a charge for the service is approved by order of the Court made upon notice to at least one of the next of kin of the ward, if notice is possible. He or she must exercise care to conserve any excess for the ward's needs.

e. To take or provide for the custody of the person of the ward and shall be required to care for the health, safety and welfare of such minor or incapacitated and provide for their education and medical care as needed or appropriate.

f. Guardian may petition the Court for authority to do any act about which he/she is uncertain, and the Court may grant such authority, after such notice and hearing, if any, as the Court may direct if such appears to be consistent with the best interest of the minor or incapacitated.

2. Providing for the care, comfort and maintenance of the ward, including the appropriate training and education to maximize the ward's potential.
3. Taking reasonable care of the ward's clothing, furniture, vehicle and other personal effects.
4. Assisting the ward in developing maximum self-reliance and independence.
5. Ensuring the ward receives necessary emergency medical services.
6. Ensuring the ward receives professional care, counseling, treatment, or services as needed. If necessitated by the physical or mental disability of the ward, the provision of professional care, counseling, treatment, or services is limited to the provision of routine physical and dental examinations and procedures under anesthesia is included, if the anesthesia is provided within the scope of the health care practitioner's scope of practice. [TCR 11-72]

18-305 Powers and Duties of Guardian; subject to approval of the Court. A guardian may be granted the following additional powers only upon Court approval.

1. Changing the ward's permanent residence if the proposed new residence is more restrictive of the ward's liberties than the current residence.
2. Arranging for the provision of major elective surgery or any other non-emergency major medical procedure.
   a. "Major elective surgery" does not include the provision to the ward of professional care, counseling, treatment, or services limited to the provision of routine physical and dental examinations and procedures under anesthesia, if the use of anesthesia is necessitated by the physical or mental disability of the ward, and if the anesthesia is provided within the scope of the health care practitioner's scope of practice.
3. Consent to the withholding or withdrawal of life-sustaining procedures.
4. Consent to the marriage or adoption of the ward. [TCR 11-72]

18-306 Powers and duties of Guardian; other.

1. The Court make take into account all available information concerning the capabilities of the ward and any additional evaluation deemed necessary, including the availability of third-party assistance to meet the needs of the ward or proposed ward.
2. The Court may direct that the guardian only have a specially limited responsibility for the ward. In that event, the Court shall state those areas of responsibility which shall be supervised by the guardian and all other shall be retained by the ward.
3. The Court may make a finding that the ward lacks the capacity to contract a valid marriage. From time to time, upon a proper showing, the Court may modify the respective responsibilities of the guardian and the ward, after notice to the ward and an opportunity to be heard. Any modification that would be more restrictive or burdensome for the ward shall be based on clear and convincing evidence that the ward continues to fall within the categories of Section 18-211 and that the facts justify a modification of the guardianship. [TCR 11-72]

18-307 Powers and duties of guardian of a minor.

1. A guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of his minor and unemancipated child, except that a guardian is not legally obligated to provide from his own funds for the ward and is not liable to third persons by reason of the parental relationship for acts of the ward. In particular, and without qualifying the foregoing, a guardian has the following powers and duties:
   a. To take reasonable care of the ward's personal effects and commence protective proceedings if necessary to protect other property of the ward;
   b. To receive money payable for the support of the ward to the ward's parent, guardian or custodian under the terms of any statutory benefit or insurance system, or any private contract, devise, trust, conservatorship or custodianship;
   c. To exercise due care to conserve any excess for the ward's future needs unless a conservator has been appointed for the estate of the ward, in which case such excess shall be paid over at least annually to the conservator;
   d. To facilitate the ward's education, social, or other activities and to authorize medical or other professional care, treatment, or advice; provided, that a guardian is not liable by reason of this consent for injury to the ward resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have consented;
   e. To report the condition of the ward and of the ward's estate which has been subject to the guardian's possession or control, as ordered by the Court, and upon termination of the guardianship settle with the ward and pay over and deliver all of the estate and effects remaining in the guardian's hands or due from the guardian on settlement to the person or persons who shall be lawfully entitled thereto.

2. A guardian of a minor may exercise the following powers and duties:
   a. To receive money or personal property from any person under a duty to pay or deliver money or personal property to a minor;
   b. To institute proceedings to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward.
3. The appointment of a guardian for a minor shall not relieve the minor's parent or parents, liable for the support of such minor, from their obligation to provide for such minor. For the purposes of guardianship of minors, the application of guardianship income and principal after payment of debts and charges of managing the estate, in relationship to the respective obligations owed by fathers, mothers, and others, for the support, maintenance and education of the minor shall be:
   a. The income and property of the father and mother of the minor in such manner as they can reasonably afford, regard being had to the situation of the family and to all the circumstances of the case;
   b. The guardianship income, in whole or in part, as shall be judged reasonable considering the extent of the guardianship income and the parents' financial ability;
   c. The income and property of any other person having a legal obligation to support the minor, in such manner as the person can reasonably afford, regard being had to the situation of the person's family and to all the circumstances of the case; and
   d. The guardianship principal, either personal or real estate, in whole or in part, as shall be judged for the best interest of the minor, considering all of the circumstances of the minor and those liable for his support.
4. The Court may from time to time authorize the guardian to use so much of the guardianship income or principal, whether personal or real estate, as it may deem proper, considering all the circumstances of the minor and those liable for his support, if it is shown that (a) an emergency exists which justifies an expenditure, or (b) a fund has been given to the minor for a special purpose and the Court can, with reasonable certainty, ascertain such purpose. [TCR 11-72]

18-308 Qualification of guardian. Any competent natural person 21 years of age or older or a suitable institution, except any institution or employee of such institution that provides care, treatment or housing to the ward, may serve as a guardian; provided that, nothing in this Section shall prevent a spouse, adult child, parent or other relative from being appointed as guardian. Preference shall be given to relatives of the ward in order of their closeness of relationship and some preference shall also be given to a person with whom the ward is living at the time of the guardianship hearing. In all cases, the Court shall determine the best interests of the ward in selecting a guardian. [TCR 11-72]

18-309 Appointment of guardian based on incompetency.

1. If the allegations of the petition as to the status of the proposed ward and the necessity for the appointment of a guardian are proved by clear and convincing evidence, the Court may appoint a guardian.
2. Every guardian appointed as provided herein shall serve until discharged by the Court. [TCR 11-72]

18-310 Appointment of guardian based on minority.

1. Upon hearing, if the Court finds that a qualified person seeks appointment, the required notices have been given, and the welfare and best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases, the Court may dismiss the proceedings, or make any other disposition of the matter that will best serve the interest of the minor.

2. If, at any time in the proceeding, the Court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is fourteen years of age or older.
3. Appointment of a guardian of a minor shall be subject to Section 18-301 and the appointment preferences under Section 18-213. [TCR 11-72]

18-311 Appointment of temporary guardian.

1. A temporary guardian may be appointed, but only after a hearing on such notice, and subject to such conditions, as the Court shall prescribe.
2. In an emergency, the Court may appoint a temporary guardian, pending notice and hearing. Any request for an emergency guardianship must be supported by an affidavit detailing the need for the guardianship and the reason why an emergency guardianship without hearing and notice is necessary. [TCR 11-72]

18-312 Bond. A guardian shall not be required to give bond unless the Court, for good cause, finds that the best interests of the ward require a bond. The Court may require a guardian to provide security in the form of a bond or otherwise to assure the faithful performance of the guardian's duties. Any surety of any such security will be deemed to have consented to the jurisdiction of the Winnebago Tribe of Nebraska Tribal Court for the purposes of action against such security. [TCR 11-72]

18-313 Reporting requirements — guardian.

1. A guardian appointed under this Article shall file with the Court the following written verified reports:
   a. An initial report within 60 days of the guardian's appointment.
   b. An annual report every year within 90 days of the annual anniversary of appointment of the guardian, unless the Court otherwise orders that a report should be filed every six (6) months or at some other interval to be determined by and in the discretion of the Court.
   c. A final report within 30 days of the termination of the guardianship unless that time is extended by the Court.
2. Reports required by this Section must include:
   a. The current mental and physical condition of the ward.
   b. The present living arrangements of the ward, including a description of each resident where the ward has resided during the reporting period.
   c. A summary of the medical, education, vocational and other professional services provided for the ward.
   d. A report of the ward's income, assets, debts, disbursements and other relevant financial information for the reporting period.
   e. A description of the guardian's visits with and activities on behalf of the ward.
   f. A recommendation as to the need for continued guardianship.
   g. Other information requested by the Court or useful in the opinion of the guardian.
   h. Reports of the guardian shall be reviewed by the Court and either approved or not approved. If the report is not approved, notice shall be given to the guardian as to the deficiencies in the report and the Court shall set a deadline by which the report must be resubmitted.
   i. Reports required by this Section shall be served on any attorney representing the ward in the guardianship proceeding and all other parties appearing in the proceeding.
3. The Court shall provide forms to the guardians to assist in completion of the reporting requirements. [TCR 11-72]

18-314 Guardian's compensation.

1. No guardian shall receive any compensation for acting as such without the prior approval of the Court and pursuant to Section 18-220.
2. The right to receive compensation as guardian shall be deemed waived for all years in which such is not requested and received. [TCR 11-72]

18-315 Property delivered — penalty. Upon the removal or upon termination of guardianship, the guardian shall be required by order of the Court to deliver to the person who may be entitled thereto all the property in the guardian's possession or under the guardian's control belonging to the ward no later than 30 days following the removal or termination, and if the guardian fails or refuses to comply with any proper order of the Court, the guardian may be sanctioned, fined, and/or committed to jail until the guardian complies. [TCR 11-72]

18-316 Testamentary appointment of guardian for incapacitated person.

1. The parent of an incapacitated person may, by will, appoint a guardian of the incapacitated person. A testamentary appointment by a parent becomes effective when, after having given seven days' prior written notice of his intention to do so to the incapacitated person and to the person having his care or to his nearest adult relative, the guardian files acceptance of appointment in the Court in which the will is informally or formally probated if, prior thereto, both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority unless it is terminated by the denial of probate in formal proceedings.
2. The spouse of a married incapacitated person may, by will, appoint a guardian of the incapacitated person. The appointment becomes effective when, after having given seven days' prior written notice of his intention to do so to the incapacitated person and to the person having his care or to his nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or formally probated. An effective appointment by a spouse has priority over an appointment by a parent unless it is terminated by the denial of probate in formal proceedings.
3. On the filing with the Court in which the will was probated, of written objection to the appointment by the person for whom a testamentary appointment of guardian has been made, the appointment is terminated. An objection does not prevent appointment by the Court in a proper proceeding of the testamentary nominee or any other suitable person upon an adjudication of incapacity in proceedings under the succeeding Sections of this part. [TCR 11-72]

18-317 Termination of guardianship for incapacitated person; liability for prior acts; obligation to account. The authority and responsibility of a guardian for an incapacitated person terminates upon the death of the guardian or ward, the determination of incapacity of the guardian, or upon removal or resignation. Testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding. Termination does not affect his liability for prior acts nor his obligation to account for funds and assets of his ward. [TCR 11-72]

18-318 Testamentary appointment of guardian of minor. The parent of a minor may appoint by will a guardian of an unmarried minor. Subject to the right of the minor under Section 18-318, a testamentary appointment becomes effective upon filing the guardian's acceptance in the Court in which the will is probated if, before acceptance, both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority. Upon acceptance of appointment, written notice of acceptance must be given by the guardian to the minor and to the person having his care, or to his nearest adult relation. [TCR 11-72]

18-319 Objection by minor of fourteen or older to testamentary appointment. A minor of 14 years or older may object to the appointment of his testamentary guardian prior to becoming effective, or object to a previously accepted appointment, by filing with the Court — if the will went through probate in the Tribal Court — a written objection to the appointment before it is accepted or within 30 days after notice of its acceptance. An objection may be withdrawn. An objection does not preclude appointment by the Court in a proper proceeding of the testamentary nominee or any other suitable person; however, the Court shall take the objection into consideration when making the appointment. [TCR 11-72]

TITLE 18
GUARDIANSHIP AND CONSERVATORSHIP

ARTICLE 4
CONSERVATORSHIP

18-401 Petition for appointment of conservatorship.
18-402 Permissible court orders.
18-403 Notification of conservatorship powers.
18-404 Appointment of conservator.
18-405 Appointment of temporary and/or limited conservator.
18-406 Duties of conservator.
18-407 Powers of conservator without further Court order.
18-408 Powers of conservator subject to the approval of the Court.
18-409 Powers of ward.
18-410 Qualification of conservator.
18-411 Bond.
18-412 Amount of bond.
18-413 Bond – approval by Clerk.
18-414 Review by Clerk when inventory is filed.
18-415 Bond changed.
18-416 Obligees of bond – joint and several liability.
18-417 Order for delivery.
18-418 Inventory – reporting requirements.
18-419 Title to ward's property.
18-420 Conservator's right to possession.
18-421 Presumption of fraud.
18-422 Claims against ward, conservatorship, or conservator in that capacity.
18-423 Forms and verification of claims filed with Clerk.
18-424 Filing of claim required.
18-425 Compelling payment of claims.
18-426 Allowance by conservator.
18-427 Execution and levy prohibited.
18-428 Claims of conservators.
18-429 Claims not filed.
18-430 Liens not affected by failure to claim.
18-431 Pending actions.
18-432 General denial of claims.
18-433 Disallowance of claim by conservator.
18-434 Notice of disallowance and request for hearing.
18-435 Notice of disallowance; proof of service.
18-436 Notice of disallowance; claims barred after twenty days.
18-437 Request for hearing by claimant.
18-438 Applicability of Rules of Civil Procedure to hearing on claim.
18-439 Payment of claims in insolvent conservatorships.
18-440 Conservator may make gifts.
18-441 Assets exhausted.
18-442 Accounting to ward upon termination – notice.
18-443 Delivery of assets.
18-444 Discharge of conservator and release of bond.
18-445 Removal of conservator by Court.
18-446 Property delivered – penalty.

18-401 Petition for appointment of conservatorship. Any person may file with the Clerk a verified petition for the appointment of a conservator. The petition shall state the following information, so far as known to the petitioner:

1. The name, age and address of the proposed ward.
2. That the proposed ward is in either of the following categories and the factual basis therefore:
   a. Is a person whose decision-making capacity is so impaired that the person is unable to make, communicate, or carry out important decisions concerning the person's financial affairs.
   b. Is a minor.
3. The name and address of the proposed conservator, the relationship of the proposed conservator to the proposed ward, and that such person is qualified to serve in that capacity.

4. The estimated present value of the real estate, the estimated value of the personal property, and the estimated gross annual income of the estate of the ward. If any money is payable, or becomes payable, to the proposed ward by any third party, entity or agency of the Winnebago Tribe of Nebraska tribal government, or federal, or state government, the petition shall so state.
5. The name and address of the person or institution, if any, having the care, custody or control of the proposed ward.
6. That the proposed ward resides within the exterior boundaries of the reservation and/or is an enrolled member of the Winnebago Tribe of Nebraska, is a non-resident, is not enrolled, or that the proposed ward's residence is unknown, and that the proposed ward's best interests require the appointment of a conservator. [TCR 11-72]

18-402 Permissible court orders. The Court has the following powers which may be exercised directly or through a conservator with respect to the estate and affairs of protected persons:

1. While a petition for appointment of a conservator is pending and after preliminary hearing and without notice to others, the Court has power to preserve and apply the property of the person to be protected as may be required for his or her benefit or for the benefit of his or her dependents.
2. After hearing and upon determining that a basis for an appointment exists for a minor (without other disability), the Court has all those powers over the estate and affairs of the minor which are or might be necessary for the best interests of the minor, the minor's family, and members of the minor's household.
3. After hearing and upon determining by clear and convincing evidence that a basis for an appointment or other protective order exists with respect to a person for reasons other than minority, the Court has, for the benefit of the person and members of his or her household, all the powers over his or her estate and affairs which he or she could exercise if present and not under disability except the power to make a will. These powers include, but are not limited to, power to make gifts, to convey or release his or her contingent and expectant interests in property including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety, to exercise or release his or her powers as trustee, personal representative, custodian for minors, conservator, or donee of a power of appointment, to enter into contracts, to create revocable or irrevocable trusts of property of the estate which may extend beyond his or her disability or life, to exercise or release of his or her powers as settler of a revocable trust to exercise options. [TCR 11-72]

18-403 Notification of conservatorship powers. In a proceeding for the appointment of a conservator, the proposed ward shall be given written notice which advised the proposed ward that if a conservator is appointed, the conservator may, without Court approval, manage the proposed ward's principal, income, and investments, sue and defend any claim by or against the ward, sell and transfer personal property, and vote at corporate meetings. The notice shall also advise the proposed ward that, upon the Court's approval, the conservator may invest the ward's funds, execute leases, make payments to or for the benefit of the ward, support the ward's legal dependents, compromise or settle any claim, and do any other thing that the Court determines is in the ward's best interests. The notice shall clearly advise the proposed ward of the right to counsel and the potential deprivation of the proposed ward's civil rights. The notice shall also state that the proposed ward may use the ward's own attorney instead of an attorney appointed by the Court. The notice shall be served upon the proposed ward as provided in Section 18-208. [TCR 11-72]

18-404 Appointment of conservator.

1. If the allegations of the petition as to the status of the proposed ward and the necessity for the appointment of a conservator are proved by clear and convincing evidence, then the Court may appoint a conservator.
2. Every conservator appointed as provided herein shall serve until discharged by the Court. [TCR 11-72]

18-405 Appointment of temporary and/or limited conservator.

1. A temporary and/or limited conservator may be appointed but only after a hearing on such notice and subject to such conditions as the Court shall prescribe.
2. A temporary conservatorship shall not extend longer than six (6) months from the date of appointment.
3. The Court may appoint a limited conservator to assist in the accomplishment of any protective arrangement or other single transaction. Such limited conservator shall serve until discharged by Court order and report to the Court of all matters done pursuant to the order of appointment. [TCR 11-72]

18-406 Duties of conservator.

1. It is the duty of the conservator of the estate to protect and preserve it, to invest it prudently, to account for it as herein provided, and to perform all other duties required of the conservator by law, and at the termination of the conservatorship, to deliver the assets of the ward to the person entitled thereto.
2. The conservator shall report to the Court at least annually unless the Court otherwise orders that a report should be filed at shorter intervals to be determined by and in the discretion of the Court, and the report shall comply with the provisions of Section 18-418. [TCR 11-72]

18-407 Powers of the conservator without further Court order. Upon appointment by the Court as the ward's conservator, the conservator shall have the full power, without further order of the Court, with relation to the estate of the ward:

1. To collect, receive, and provide receipts for, any principal or income, and to enforce, defend against or prosecute any claim by or against the ward or the conservator; to sue on and defend claims in favor of, or against the ward or the conservator.
2. To sell and transfer personal property of a perishable nature and personal property for which there is a regularly established market.
3. To vote at corporate meetings in person or by proxy.
4. To receive additional property from any source.
5. To continue to hold any investment or other property originally received by the conservator and also any increase therefore, pending the timely filing of the first annual report. [TCR 11-72]

18-408 Powers of conservator subject to the approval of the Court. Upon appointment, a conservator shall have the following powers subject to prior approval of the Court after hearing on such notice, if any, as the Court may prescribe:

1. To invest the funds belonging to the ward.
2. To execute leases.
3. To make payments to, or for the benefit of, the ward in any of the following ways:
   a. Directly to the ward;

b. Directly for the maintenance, welfare and education of the ward;
c. To the legal guardian of the person of the ward; or
d. To anyone who at the time shall have the custody and care of the person of the ward.

4. To apply any portion of the income or of the estate of the ward for the support of any person for whose support the ward is legally liable.
5. To make an election to the ward who is a surviving spouse.
6. To do any other thing that the Court determines to be in the best interest of the ward and the ward's estate.
7. Under order of the Court, for good cause shown, after such notice as the Court may prescribe, a conservator shall have the power to breach contracts of the ward entered into by the ward prior to the appointment of a conservator, thereby incurring such liability of the ward's estate for such breach as the ward would have incurred for such breach if the ward had been competent.
8. Under order of Court, for good cause shown, after such notice as the Court may prescribe, a conservator shall have the power to sell, mortgage, exchange, pledge and lease real and personal property belonging to the ward, including the homestead and exempt personal property, when it appears to be the best interests of the ward, upon such terms and conditions that the Court may order and as permitted by law. [TCR 11-72]

18-409 Powers of ward.

1. A ward for whom a conservator has been appointed shall not have the power to convey, encumber, or dispose of property in any manner, other than by will if the ward possesses the requisite testamentary capacity, unless the Court determines that the ward has a limited ability to handle the ward's own funds. If the Court makes such a finding, it shall specify to what extent the ward may possess and use the ward's own funds.
2. Any modification of the powers of the ward that would be more restrictive of the ward's control over the ward's financial affairs shall be based upon clear and convincing evidence and the burden of persuasion is on the conservator. Any modification that would be less restrictive of the ward's control over the ward's financial affairs shall be based upon proof in accordance with the requirements of Section 18-211. [TCR 11-72]

18-410 Qualification of conservator. Any competent natural person 21 years of age or older or a corporation with general power to serve as trustee, except any institution or employee of such institution that provides care, treatment or housing to the ward, and exhibits ability to exercise the powers to be assigned by the Court may serve as a conservator; provided that, nothing in this Section shall prevent a spouse, adult child, parent or other relative from being appointed as conservator. Preference shall be given to relatives of the ward in order of their closeness of relationship and some preference shall also be given to the expressed wishes of the ward. In all cases, the Court shall determine the best interests of the ward in selecting a conservator. [TCR 11-72]

18-411 Bond. Unless exempted by the Court under Section 18-412 below, whenever a conservator is appointed, or upon the Court determining that a guardian shall be required to post bond, the Court shall determine the amount of the bond as set forth in Section 18-412 below and the terms and conditions thereof. Upon such determination by the Court, the conservator and/or guardian shall file with the clerk a certified copy of the conservator's official bond with sufficient surety or sureties and it shall be conditioned upon the faithful discharge of all the duties of the conservator and /or guardian according to law, including the duty to account. The bond shall be procured at the expense of the estate if an approved surety bond is furnished. The bond shall be duly authenticated by the Clerk of the Court, or the Clerk shall also file as a Court record a receipt for the property of the ward received by the conservator or guardian, which receipt shall be provided to the Clerk by the guardian or conservator. The Clerk shall file and record the bond(s) and receipt(s). [TCR 11-72]

18-412 Amount of bond. Except as otherwise set forth herein or as may be otherwise ordered by the Court for good cause shown, the Clerk of the Court shall fix the penalty of the bond in an amount equal to the value of the personal property of the estate, plus the estimated gross annual income of the estate during the period of administration. The Court shall not exempt a conservator from giving a bond in a conservatorship with total assets of more than $10,000.00 except for good cause shown. [TCR 11-72]

18-413 Bond — approval by Clerk. The bond shall not be deemed sufficient until it has been examined and approved by the Clerk who shall endorse such approval thereon. In the event the bond is not approved, the conservator or guardian shall, within such time as the Court directs, secure and file a bond with satisfactory surety or sureties. [TCR 11-72]

18-414 Review by Clerk when inventory is filed. At the time the inventory of the estate is filed, the Clerk shall review the amount of bond and report to the Court as to any apparent insufficiency thereof. [TCR 11-72]

18-415 Bond changed. The Court may at any time require a new bond, or increase or decrease the amount of the penalty of the bond of any conservator or guardian when good cause therefore appears. [TCR 11-72]

18-416 Obligees of bond — joint and several liability. The bond of the conservator or guardian shall run to the use of all persons interested in the estate, and shall be for the security and benefit of such persons. The sureties shall be jointly and severally liable with the conservator or guardian and with each other. [TCR 11-72]

18-417 Order for delivery. Upon the filing of the bond as provided above, the Court being satisfied with the amount thereof, it shall order the personal property of the ward delivered to such conservator or guardian and with each other. [TCR 11-72]

18-418 Inventory — reporting requirements.

1. A conservator appointed under this Section has a duty to make a diligent search to determine and discover the debts and property, real and personal, of the ward and the conservator shall file with the Court.
    a. An inventory within 60 days of the conservator's appointment. This inventory shall include all debts and property of the ward that has come into the conservator's possession or of which the conservator has knowledge. When additional debts and/or property come into the possession of the conservator or to the knowledge of the conservator, a supplemental inventory shall be filed within 30 days.
    b. Written verified reports and accountings as follows:
        i. Annually, within 90 days of the anniversary of the date of appointment of the conservator, unless the Court otherwise orders that a report should be filed every six months or at some other interval to be determined by and in the discretion of the Court.
        ii. Within 30 days following the date of removal of the conservator.
        iii. Upon filing resignation and before the resignation is accepted by the Court.
        iv. Within 60 days following the date of termination.
        v. At other times as the Court may order.
    c. The report and accounting shall account for all of the period since the close of the accounting contained in the most recent previously filed report to the date of the present report and shall include the following information as far as applicable:

i. The balance of funds on hand at the close of the accounting contained in the most recent previously filed report and all amounts received from whatever source during the present accounting period.
ii. All disbursements made during the present accounting period.
iii. Any changes in investments during the present accounting period, including a list of all assets, and the recommendations of the conservator for the retention or disposition of any property, real or personal, held by the conservator.
iv. A list of all debts and indebtedness as of the date of the present accounting.
v. The amount of the bond and the name of the surety on it.
vi. The residence address or the physical location of the ward.
vii. The general physical and mental condition of the ward.
viii. Such other information as shall be necessary to show the condition of the affairs of the conservatorship.

2. Reports of the conservator shall be reviewed and either approved or not approved by the Court. If the Court does not approve a report of the conservator, the Court shall, by order, instruct the conservator as to the deficiencies in the report and set a deadline by which the report must be resubmitted.
3. No order shall be entered approving an annual report of a conservator until the Court costs which have been docketed have been paid or provided for. The Court may, upon application, enter an order waiving payment of the Court costs in indigent cases. However, if the conservatorship subsequently becomes financially capable of paying any waived costs, the conservator shall immediately pay the costs. Court costs include the following:
   a. Guardian's fees, if any.
   b. Fees of the attorney for the guardian, if any.
4. The Court shall settle each and every account filed by the conservator by allowing or disallowing it, either in whole or in part, or by surcharging the account against the conservator.
5. Reports required by this Section shall be served on the attorney representing the ward in the conservatorship proceeding and all other parties appearing in the proceeding.
6. Failure by the conservator to file the report may result in removal of the conservator and forfeiture of the bond. [TCR 11-72]

18-419 Title to ward's property. The title to all property of the ward is in the ward and not the conservator, subject however, to the possession of the conservator and to the control of the Court for the purposes of administration, sale or other disposition, under the provisions of law. [TCR 11-72]

18-420 Conservator's right to possession. Every conservator shall have a right to, and shall take, possession of all of the real and personal property of the ward. The conservator shall pay the taxes and collect the income therefore until the conservatorship is terminated. The conservator may maintain an action for the possession of the property and to determine the title to same. [TCR 11-72]

18-421 Presumption of fraud. If a conservator is appointed, all contracts, transfers and gifts made by the ward after the filing of the petition shall be presumed to be a fraud against the rights and interest of the ward except as otherwise directed by the Court pursuant to Section 18-407(7). [TCR 11-72]

18-422 Claims against ward, conservatorship or conservator in that capacity. Claims accruing before or after the appointment of the conservator, and whether arising in contract or tort or otherwise, after being allowed or established as provided in this Article, shall be paid by the conservator from the assets of the conservatorship. [TCR 11-72]

18-423 Forms and verification of claims filed with Clerk.

1. A claim against the estate of a ward shall be in writing, filed in duplicate with the Clerk, stating the claimant's name and address, and describing the nature and amount claimed. It shall be accompanied by the affidavit of the claimant or an agent of the claimant, stating that the amount is justly due, or if not due, when it will or may become due, that no payments have been made thereon which are not credited, and that there are no offsets to the same, to the knowledge of the affiant, except as stated therein.
2. The Clerk shall mail the duplicate to the conservator or the conservator's attorney of record.
3. If a claim is founded upon a written instrument, the original of such instrument, or a copy thereof, with all endorsements, must be attached to the claim. The original instrument must be exhibited to the conservator or to the Court, upon demand, unless it has been lost or destroyed, in which case, its loss or destruction must be stated in the claim. [TCR 11-72]

18-424 Filing of claim required. The filing of a claim in the conservatorship tolls the statute of limitations applicable to such claim until 30 days after its disallowance. [TCR 11-72]

18-425 Compelling payment of claims. No claimant shall be entitled to compel payment until the claimant's claim has been duly filed and allowed. [TCR 11-72]

18-426 Allowance by conservator. When a claim has been filed and has been admitted in writing by the conservator, it shall stand allowed, in the absence of fraud or collusion. [TCR 11-72]

18-427 Execution and levy prohibited. No execution shall issue upon, nor shall any levy be made against any property of the estate of a ward under judgment against the ward or conservator, but the provisions of this Section shall not be so construed as to prevent the enforcement of a mortgage, pledge or other lien upon property in an appropriate proceeding. [TCR 11-72]

18-428 Claims of conservators. If the conservator is a creditor of the ward, the conservator shall file the claim as with other creditors, and the Court shall appoint a temporary conservator to represent the ward at the hearing on the conservator's claim.

18-429 Claims not filed.

1. The conservator may pay any valid claim against the estate of the ward even though such claim has not been filed, but all such payments made by the conservator shall be at the conservator's own peril.
2. Valid contract claims arising in the ordinary course of the conduct of business or affairs of the ward by the conservator may be paid by the conservator without requiring affidavit or filing pursuant to Section 18-423. [TCR 11-72]

18-430 Liens not affected by failure to claim. Nothing in Section 18-422 shall affect or prevent an action or proceeding to enforce any mortgage, pledge or other lien upon the property of the ward. Such proceedings shall not be subject to claims under this Code. [TCR 11-72]

18-431 Pending actions. Any action pending against the ward at the time the conservator is appointed shall be considered a claim filed in the conservatorship if notice is served on the conservator as defendant, and a duplicate of the proof of service of notice of such proceeding is filed in the conservatorship proceeding. [TCR 11-72]

18-432 General denial of claims. Where a claim has been filed, but not admitted in writing by the conservator before a hearing, the claim shall be considered denied. [TCR 11-72]

18-433 Disallowance of claim by conservator. At any time after the filing of a claim against an estate, the conservator may give the claimant and the claimant's attorney of record, if any, written notice of disallowance of claim. The notice shall be given by certified mail addressed to the claimant at the address stated in the claim and to the claimant's attorney of record, if any. A presented claim is allowed if it is not disallowed by written statement mailed by the conservator to the claimant and/or claimant's attorney within sixty (60) days after its presentation. [TCR 11-72]

18-434 Notice of disallowance and request for hearing. A notice to a claimant of disallowance of claim shall advise the claimant that the claim has been disallowed and will be forever barred unless the claimant shall, within 20 days after the date of mailing the notice, file a request for hearing on the claim with the Clerk, and mail a copy of such required for hearing to the conservator and the conservator's attorney of record, if any, by certified mail. [TCR 11-72]

18-435 Notice of disallowance; proof of service. Proof of service of the notice of disallowance shall be made by affidavit, shall show the date and place of mailing, and shall be filed with the clerk. [TCR 11-72]

18-436 Notice of disallowance; claims barred after twenty days. Unless the claimant shall within 20 days after the date of mailing the notice of disallowance file a request for hearing with the Clerk and mail a copy of the request for hearing to the conservator and to the conservator's attorney of record, if any, the claim shall be deemed disallowed, and shall be forever barred. [TCR 11-72]

18-437 Request for hearing by claimant. At the time of the filing of a claim against an estate, or at any time thereafter prior to the time that the claim may be barred by the provisions of Section 18-436, or the approval of the final report of the conservator after notice to the claimant, the claimant may file a request for hearing with the Clerk, and mail a copy of the request for hearing to the conservator and the conservator's attorney of record, if any. [TCR 11-72]

18-438 Applicability of Rules of Civil Procedure to hearing on claim. Within 20 days from the filing of a request for hearing on a claim, the conservator shall move or plead to said claim and file any counterclaim against the claimant for an offset against the claim or other counterclaim in the same manner as though the claim were a petition filed in an ordinary action, and thereafter, all provisions of the law and Rules of Civil Procedure shall apply. [TCR 11-72]

18-439 Payment of claims in insolvent conservatorships. When it appears that the assets in a conservatorship are insufficient to pay in full all the claims against such conservatorship, the conservator shall report such matter to the Court, and the Court shall, upon hearing, with notice to all persons who have filed claims in the conservatorship, make an order for the pro rata payment of claims giving claimants the same priority, if any, as they would have if the ward were not under conservatorship. Preference shall be given to prior claims for the care, maintenance and education of the ward or the ward's dependents. [TCR 11-72]

18-440 Conservator may make gifts. For good cause shown and under order of Court, a conservator may make gifts on behalf of the ward out of the assets under a conservatorship to persons or religious, education, scientific, charitable, or other nonprofit organizations to whom or to which such gifts were regularly made prior to the commencement of the conservatorship, or on a showing to the Court that such gifts would benefit the ward or the ward's estate from the standpoint of income, gift, estate, or inheritance

taxes. The making of gifts out of the assets must not foreseeably impair the ability to provide adequately for the best interests of the ward. [TCR 11-72]

18-441 Assets exhausted. At any time that the assets of the ward's estate do not exceed the amount of the charges and claims against it, the Court may direct the conservator to proceed to terminate the conservatorship. [TCR 11-72]

18-442 Accounting to ward upon termination — notice. Upon the termination of a conservatorship, the conservator shall pay the costs of administration and shall render a full and complete accounting to the ward and the ward's attorney, if any, or on the ward's guardian and attorney for the guardian, if any, and to the Court. Notice of the final report shall be served on the ward and the ward's attorney, if any, or the ward's guardian and attorney for the guardian, if any, in accordance with Section 18-209 unless notice is waived. An order prescribing notice may be made before or after the filing of the final report. [TCR 11-72]

18-443 Delivery of assets. Upon the termination of a conservatorship, all assets of the conservatorship shall be delivered under direction of the Court to the person or persons entitled to them. [TCR 11-72]

18-444 Discharge of conservator and release of bond. Upon settlement of the final accounting of a conservator, and upon determining that the property of the ward has been delivered to the person or persons lawfully entitled thereto, the Court shall discharge the conservator and exonerate the surety on the conservator's bond. [TCR 11-72]

18-445 Removal of conservator by Court. When any conservator is, or becomes, disqualified or has mismanaged the estate, dies, fails or failed to perform any duty imposed by law, or by any lawful order of Court, then the Court may remove the conservator. The Court may upon its own motion, and shall upon the filing of a verified petition by any person interested in the estate, including a surety on the conservator's bond, order the conservator to appear and show cause why the conservator should not be removed. Any such petition shall specify the grounds of complaint. The removal of a conservator after letters are duly issued to the conservator shall not invalidate the conservator's official acts performed prior to removal. [TCR 11-72]

18-446 Property delivered — penalty. Upon the removal of any conservator, the conservator shall be required by order of the Court to deliver to the person who may be entitled thereto all the property in the conservator's possession or under the conservator's control belonging to the estate of the ward and if the conservator fails or refuses to comply with any proper order of the Court, the conservator may be sanctioned, fined, or committed to jail until the conservator does. [TCR 11-72]