

*Amended by motion 6/17/97.  
adaption expires 7/16/97.*

RESCINDED 7/16/97.  
*msd*

Resolution No. 97-54-DSB

RESOLUTION OF THE GOVERNING BODY OF  
THE THREE AFFILIATED TRIBES OF THE  
FORT BERTHOLD RESERVATION

- WHEREAS, this Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority of said Act;
- WHEREAS, the Constitution authorizes the Council to exercise all necessary powers to improve tribal self-government, specifically Article VI of Sections 3 and 5 empowers the Tribal Business Council to enact laws;
- WHEREAS, tribal code amendments are necessary to organize the current laws by Titles and Chapters;
- WHEREAS, it is difficult to locate current sections of the tribal laws and such laws are an important part of tribal self-government;
- WHEREAS, the Tribal Business Council has decided that improving the tribal code is a priority, and available resources will be used to make the required changes in the tribal code;
- WHEREAS, new tribal laws are essential so the court can function, and changes are needed in the areas listed below:
1. A revised Table of Contents as attached (Title I, II);
  2. Title I Tribal Courts with Chapters 1-4;
  3. Title II Civil Actions with Chapters 1-3;
  4. amend old Chapter 3 sentences; and
  5. amend old Chapter 6 criminal Rule 23, time to request jury.
- WHEREAS, the code amendments will be inserted in the code as stated in the revised Table of Contents,

THEREFORE BE IT RESOLVED, that:

1. the attached amendments described above are hereby adopted;
2. the amendments and new laws adopted apply to all pre-existing claims and pending cases and are essential in order to regulate the court caseload; and
3. any prior inconsistent provisions are repealed.

**FORT BERTHOLD TRIBAL CODE**

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(Old Code Chapter)

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(Old Code Chapter)

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**Above completed to February, 1997**

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**New Titles apply, and current Chapters will be rearranged and amended as necessary in the format listed below.**

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# **Title I Tribal Court**

## **Chapter 1 General Provisions**

### **Section 1 Authority and Construction**

**1.1 Policy.** This code of laws is adopted under the statutory and inherent authority of the Three Affiliated Tribes. The intent of the Fort Berthold Tribal Code is to protect all persons and resources, and to achieve self-sufficiency.

**1.2 Construction.** The following principles of construction will apply to all the laws unless a different construction is obviously intended or explained.

- (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 in a specific part that definition shall apply to all parts 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) Any and all inconsistencies in resolutions or ordinances which conflict in any way with the intent and provisions of this code are hereby repealed. If any law or part of this code is held invalid, the remainder of the code shall be severable.
- (6) Any typographical errors or omissions shall be ignored when the intended meaning of the provision containing the error is otherwise reasonably certain to the court.
- (7) The term Tribe herein shall refer to the Three Affiliated Tribes of the Fort Berthold Indian Reservation. The term Council herein shall refer to the Tribal Business Council of the Tribe, unless another usage or meaning is stated.

**1.3 Applicable Law.** The laws will be applied in the following priority:

- (1) Treaties and federal laws that apply to the Tribe;
- (2) ordinances and laws of the Tribe;
- (3) the customs, usage and jurisprudence of the Tribe; and
- (4) other laws as the court may utilize, provided that other laws shall not be construed to have any greater authority than the customs or jurisprudence of the Tribe.

**1.4 Sovereign immunity.** Nothing contained in the code shall be construed as a waiver of sovereign immunity from suit of the Tribe, its officers, businesses, or entities unless specifically waived. A waiver of immunity will not be implied, and any waiver must be expressly stated as to its terms and conditions.

## **Section 2 Establishment of Courts**

**2.1 Powers.** The judicial power of the people shall be vested in the Fort Berthold Judiciary and extend to all cases and controversies in law, equity and custom. The Courts, acting through their officers, shall have the power to issue all process, orders, and judgments which may be necessary for the due execution of powers vested in the Courts.

**2.2 District Court.** The District Court shall be a court of general jurisdiction over all civil and criminal matters and appeals from administrative bodies as provided by law.

**2.3 Juvenile.** The Juvenile Court shall have original and exclusive jurisdiction over all cases arising under the juvenile or other code parts.

**2.4 Court of Appeals.** The Court of Appeals shall exercise jurisdiction to review orders and decide appeals from final judgments or order of the other courts, or as provided by law.

## **Section 3 Jurisdiction of the Courts**

**3.1 Policy.** It is the intent of this code that the jurisdictional powers be liberally construed to serve the ends of justice, and a lack of legislation in an area shall not be deemed a waiver of that authority. It is judicial policy that available tribal administrative and court remedies be utilized to address any issues or defenses raised.

**3.2 Territorial.** The jurisdiction of the courts shall extend to any and all lands within the reservation boundaries, including all easements, fee patented lands, rights-of-way, and over lands outside the reservation boundaries held in trust for tribal members or the Tribe, or as allowed under federal law or treaty rights.

**3.3 Personal.** The court shall jurisdiction civil and criminal jurisdiction over all persons who reside, enter or transact business within the territorial boundaries of the reservation; provided that criminal jurisdiction over non-members shall extend as permitted by case law or federal law. For purposes of jurisdiction “persons” shall include individuals, business, partnerships, associations, cooperatives, corporations and any other legal commercial entity.

**3.4 Property.** The court shall have jurisdiction over all property, real and personal located within the boundaries and over lands or interests outside the reservation boundaries. Such jurisdiction shall extend to ownership of rights in property, and the application of property to the satisfaction of a judgment for which the owner is liable.

The court has the authority to conduct in rem proceedings concerning property located within the reservation boundaries.

## **Section 4 Composition**

**4.1 District Judge.** The district judge must be a licensed attorney with experience in federal Indian law. The judge shall be appointed by the Council for a term of four (4) years, or as set by contract. The district judge will serve as the chief judge of the district court, and have authority to hear civil criminal and other matters; to issue orders and handle all court matters that arise. The district judge can appoint an associate judge or magistrate on a temporary basis to handle the caseload or for emergencies.

**4.2 Associate Judge.** An associate judge must be a licensed attorney with experience in federal Indian law. The judge shall be appointed by the Council for a term of one (1) year, or as set by contract. The associate judge has the authority to conduct hearings, issue orders, and sign necessary documents in all cases that are assigned by the district judge or as scheduled.

**4.3 Magistrate.** A magistrate must be a tribal member and a licensed advocate. The Council shall appoint the magistrate for a term of two (2) years, or as set by resolution. The Council may appoint an alternate magistrate to serve on an emergency basis or as needed to handle the caseload. The magistrate shall have the authority to do criminal arraignments, issue emergency orders, handle small claims cases, other matters as set by law or assigned by the district judge.

The district judge may suspend a magistrate for cause shown, and a hearing will be conducted upon written request made within five (5) days. A hearing will be conducted by an attorney hearing officer as provided in the removal part.

**4.4 Appeals Judges.** Appeals will be decided by the Northern Plains Intertribal Court of Appeals. Copies of the authorizing resolution and appellate rules will be attached to the tribal code as an appendix.

If the Tribe elects to start its own appeals court, it shall consist of three judges, two of whom shall be licensed attorneys, appointed by the Council. Alternates may also be appointed to the appeals court. A trial court judge can serve on the appeals court, provided the judge shall not participate in a case in which he rendered a decision. If an interim appeals court is necessary until the Council appoints, the district judge or clerk shall arrange for a three judge panel to hearing any pending appeals. A single judge may decide any emergency motions that may arise.

**4.5 Removal of Judge.** The Council may suspend or remove a judge or magistrate for cause upon written notice with grounds stated, unless a contract or resolution provides otherwise. A hearing must be requested and held within thirty (30) days. The hearing will



be before an attorney hearing officer appointed to decide the matter. The decision shall contain written findings and is reviewable in the district court.

**4.6 Clerk of Court.** The clerk shall be responsible for all filing, docketing, correspondence, jury selection, and scheduling. Other duties may be required or as assigned by the judges. The clerk shall process all paperwork for any appeals, serve as the clerk of the appeals court and be assisted by available deputies and clerks.

**4.7 Other Staff.** The court will employ other staff such as business manager, deputy clerks, bailiff, process server, juvenile officer, prosecutor, public defender and other support staff as necessary.

## **Chapter 2 Administration**

### **Section 1 Jury Selection**

**1.1 Six Person Jury.** A jury shall consist of six (6) persons for civil and criminal cases.

**1.2 Jury Selectors.** The Clerk of Court is authorized to direct and manage the jury selection process. The term clerk includes a deputy or person appointed by the judge.

**1.3 Source of Names.** The jury list shall be selected from the list of voters who voted in the last tribal general election. The election voter list is not inclusive and may be supplemented by others such as housing lists to get a cross-section of voters. Non-member Indians and others who are reservation residents are eligible for jury duty. A person not on a particular list can have his or her name included on a source list by filing such request with the clerk. The clerk shall review the source names and cull those who have moved, are deceased, or otherwise not eligible to serve as jurors.

**1.4 Time for Selection.** The names of prospective jurors for a jury list should be drawn yearly by February, or as required by the caseload. Provided that if no jury cases are held in a prior year, the jury list will be compiled as jury trials are scheduled.

**1.5 Methods of Jury Selection.** Jury lists can be compiled by using either of the following methods:

- (1) placing names in a box and drawing by random until the desired number of names are selected; or
- (2) assigning number 1-10 in sequence on lists, then picking one number from a group of 10 (for example, picking the number 4 from each group of 10); or,
- (3) using a jury wheel and selecting names on a rotated basis; or
- (4) using an electronic selection method the court finds to be satisfactory.

In any event, the clerk shall certify which method was used after the list is completed. The certification will be kept with the court records.

**1.6 General Jury List** Before selection the clerk shall confer with the judge to see how many cases are pending. This will assist in determining the number of person to be selected for the jury pool or jury list.

**1.7 Jury Panel**. From the jury pool a random drawing will be held to determine the jury panel for a civil or criminal trial. From this panel the jury and alternates will be chosen. The clerk may select one or more jury panels if other jury cases are scheduled. If the number of jurors is reduced by challenges etc. the clerk can select additional names from the general jury list, or the judge can command the police to summon and return with a sufficient number of prospective jurors to complete the panel.

**1.8 Information sheets and Hardships**. An information sheet should be filled out by prospective jurors who are summoned for jury duty. The information sheet will contain a part in which a person can request a hardship exemption. Individuals can be exempted by the judge upon a hardship request: persons over age 70, persons with young children and no child care, relationship to a party, or other personal or work related reason. The clerk will develop a standard form for persons requesting exemption from jury duty. A person can not be disciplined or discharged for jury duty.

**1.9 Persons not eligible**. The following persons are not eligible to serve as jurors: a) a non-reservation resident; b) a minor; c) a felon, unless pardoned or rehabilitated; d) an alien; e) a person not able to read and write; f) a person with a mental or infirmity; or g) a person with a serious criminal charge pending in state, federal or tribal court..

**1.10 Criminal Trials**. The six person verdict must be unanimous.

**1.11 Civil Trials**. In a six person jury the verdict can be rendered by a quotient verdict of five persons who agree on a verdict.

**1.12 Juror Fees**. The juror who serves shall be entitled to juror fees and mileage at a rate similar to other courts, or as set by the judge. The court may assess jury costs against a party in the discretion of the judge.

## **Section 2 Disqualification of judge**

**1.1 Voluntary recusal**. A judge may recuse himself or herself in any proceeding. The term judge includes any magistrate, associate or other judge.

**1.2 Grounds**. A judge may be disqualified when he or she has a personal bias or prejudice concerning a party, personal knowledge of disputed facts on a case, or a blood relationship of the first degree with a party. Prior court rulings in a matter or related case alone do not require disqualification.

**1.3 Written Motion.** A party raising a motion for disqualification must do so in writing, and set out the basis for the motion.

**1.4 Review.** The judge shall review the motion to determine if there is a factual or legal basis for the motion. Actual bias or other basis is required. If no basis is alleged or shown, the motion will be denied. If the motion contains a factual basis but the facts are disputed a hearing may be held. The case will not be heard by another judge unless the sitting judge enters an order for that purpose.

**1.5 Waiver.** A party may waive a basis for disqualification, which shall be stated on the record or by written statement. Late motions to disqualify are not favored and may be deemed waived when it appears a party delayed a motion merely to gain a tactical advantage, or proceedings are well underway.

### **Section 3 Attorney Licensing**

**3.1 Annual license.** An attorney licensed to practice in any state or federal court shall be eligible for admission. An application shall be completed and approved by the judge. Fees will be due by January 15 of each year, and the license fee is one hundred fifty (\$150) per year.

**3.2 Renewal.** The clerk may mail renewal notices in lieu of a yearly application to licensed attorneys, who must certify they are in good standing.

**3.3 Pro hac vice.** An attorney may appear pro hac vice (for one case) upon motion for limited admission, and payment of a forty (\$40) fee application fee. The judge will approve the motion upon a showing that an attorney is licensed and in good standing, and may require association with local counsel.

**3.4 Discipline.** The license of an attorney or advocate may be suspended or revoked for cause shown, which includes violations of the Rules of Professional Conduct. Disciplinary action by another licensing agency can be cause for similar sanctions after due notice. The court may appoint special counsel to investigate, report and pursue any alleged rule violations. The district court may appoint a Bar Board to review attorney and advocate licensing standards and any problems raised by the parties or public.

### **Section 4 Advocate Licensing**

**4.1 Advocate.** An advocate is a person who functions as a lay attorney and may serve as a public defender, prosecutor or legal representative in private cases.

**4.2 Conditional License.** The application fee is fifty (\$50) which is non-refundable. The judge or three member bar board may issue a conditional license to an applicant who meets the following standards: a) has college courses in a law related field, paralegal experience, or an associate degree in criminal justice or similar field; a person with a

felony is not eligible unless pardoned or rehabilitated; and an applicant must demonstrate a fitness to practice law.

**4.3 Advocate examination.** Within six (6) months of receiving a conditional license an advocate must take and pass an examination. The district judge or three member bar board will conduct and score the examination. An advocate who passes the examination is fully admitted to practice and must secure a license by January 15 of each year thereafter, and pay an annual fifty (\$50) fee.

**4.4 License exemptions.** The following persons not licensed as an attorney or advocate may appear in court:

- a) persons appearing pro se or representing themselves;
- b) an interpreter or person assisting a person in court and no formal appearance is made;
- c) a worker in a domestic abuse or similar program;
- d) a law student supervised by an attorney or advocate; and
- e) a guardian ad litem or other person appointed by the court.

## **Section 5 Appellate Rules of Procedure.**

**5.1 Intertribal Court Rules.** The Tribe is a member of the Northern Plains Intertribal Court of Appeals. A copy of the authorizing resolution and appellate rules shall be filed with the court clerk and be attached to the code as an appendix. The rules will be made available to any person requesting them. A party or attorney has a duty to check the latest edition of the appellate rules for filing an appeal from the Fort Berthold District Court.

**5.2 Appellate Rules.** Should the Tribe no longer be a member of an intertribal appeals court the Federal Rules of Appellate Procedure shall apply, including the thirty (30) day deadline to file a notice of appeal from a final order or judgment. An appeal shall be filed with the clerk of the Fort Berthold District Court. The Tribe may enact or use other appellate rules at a later date as it deems necessary.

## **Section 6 Contempt of Court**

**6.1 Grounds for Contempt.** A judge may punish a person for contempt for conduct that is disorderly, insolent behavior, disrupting proceedings, violent acts, or other disregard of the law and decorum of court proceedings. Other grounds include disobedience to court orders, refusing to be sworn or answer as a witness, or interfering with court personnel or other persons.

**6.2 Criminal Contempt.** When a contempt is committed in the presence of the judge, a summary sanction can issue or be reserved until a proceeding is completed. The judge must make an order reciting the facts and state the reasons the sanction is imposed. Sanctions to maintain the orderly conduct and decorum of court proceedings can be imposed, along with money fines and jailing if necessary.

**6.3 Civil Contempt.** In a civil case an order to show cause will be issued and a hearing set. If sanctions are imposed the contemnor is given an opportunity to purge himself of the contempt order by a payment of an obligation, or doing a required act. Summary sanctions are not permitted in a civil contempt matter.

**6.4 Reserved.**

### **Section 7 Local Rules**

**7.1 Authority.** The Fort Berthold District Court is authorized to prescribe rules for the conduct of business, including local court rules, practice and evidence. The rules are designed to assist in the efficient handling of motions, discovery, scheduling and other matters that arise.

**7.2 Copies Available.** A copy of the local rules will be made available to those who practice in the court and general public. A copy will be inserted in the code in this section or as an appendix to the tribal code.

## **Chapter 3 Evidence**

**3.1 Scope** These rules will apply to civil and criminal cases and proceedings as set by law. While court may be conducted informally as in small claims court the rules of evidence will be utilized to insure an inexpensive and fair determination of a matter.

**3.2 Federal Rules** The Federal Rules of Evidence shall apply in cases, but the tribal court may use the rules and case law from other courts as deemed just. A copy of the evidence rules will be inserted in this section or in the appendix. The court through the local rules may implement evidence requirements for cases.

**3.3 Indian customs.** The rules do not supplant oral history, language, customs and other traditional laws of the Tribe. In a proceeding in which Indian customs are at issue, or in which traditional law is sought to be applied, the court will utilize tribal elders and other reliable sources for guidance.

**3.3 Reports.** Medical, police and other similar reports shall be admissible when there is an showing of reliability and authentication. A certification by the author or custodian of a document is a prima facie evidence that it is a reliable document. A party has the option of calling a person as a witness if challenges are made to the admissibility of a document or statement.

**3.4 Reserved**

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**Comment:**

History: Title I Tribal Court, and Chapters 1-3

Enacted by Resolution No. \_\_\_\_\_ (1997)

Title I replaces former Chapter 1 Fort Berthold Indian Court, and subchapters (1950-70's) and reorganizes Resolution No. 82-192 (1982) on jurisdiction.

Cases: Since the 1980's the federal courts have required exhaustion of tribal court remedies. Key cases interpreting tribal jurisdiction and law should be placed here for future reference. E.g. Bruce H. Lien Co. v. Three Affiliated Tribes, 93 F3d 1412 (9th Cir. 1996) (validity of contract with arbitration clause was for tribal court to resolve initially, rather than by arbitrator or in federal court). Others can be added below.

## **Title II Civil Rules**

### **Chapter 1 Rules of Civil Procedure**

**Rule 1 Actions.** These rules shall govern the procedure in all suits civil in nature, and shall be construed to secure the prompt determination of every action. Rules not specifically addressed herein will use state law to govern an action.

**Rule 2 Commencement of Actions.** A civil suit is commenced by filing a complaint with the clerk of court, and a summons endorsed by the clerk. A filing fee will be required and paid to the clerk. A case number must be assigned by the clerk.

**Rule 3 Summons.** The summons must issue with the complaint and state that an answer is due within thirty (30) days after service, and if that no answer or defense is raised a default can be granted.

**Rule 4 Service.** The complaint must be served upon a party personally, by certified mail or as permitted by state law. A party may waive personal service in writing. After service of the initial pleadings, service shall be made upon the attorney of any pleadings or motions, unless service upon the party is ordered. Service by mail is complete on mailing and the pleadings must contain a certificate of service. Service by fax is permitted, provided the original is mailed or waiver of same by a party is made.

**Rule 5 Time.** In computing the time allowed the day of the event is not counted. If a defendant is served on April 1, the 20 day answering period begins on April 2 and expires on April 21. If a day falls on a holiday or sunday, the period ends on the next working day. When the time prescribed is less than 7 days, sundays and holidays are excluded in counting the days. A party may request additional time or the court may order additional time for a response or answer.

**Rule 6 Pleadings** There shall be a complaint and answer or other pleadings claims as a case requires. Motions must be writing unless made in court. A claim for relief should set out the jurisdictional base and short factual basis and relief requested. The pleadings must be signed by a party or attorney with a full address and phone number.

**Rule 7 Defenses.** A defendant or party must file an answer or response within thirty (30) days or as set by order. Defenses may include: lack of jurisdiction, improper service and failure to state a claim for relief. If matters outside the pleadings are considered a failure to state a claim motion can be treated as a motion for summary judgment.

**Rule 8 Third Party Practice.** A defendant may move to file as a third party plaintiff against a party who may be liable to him on plaintiff's claim. When a counterclaim is asserted against a plaintiff, he may add a third party upon court approval.

**Rule 9 Amended Pleadings.** A party may amend his pleading once at any time within 20 days, or by leave of court. Pleadings relate back to the date of the original pleading. Leave to amend shall be liberally granted.

**Rule 10 Pre-Trial.** A party may request a pre-trial or the court may order a pre-trial to narrow the issues, and handle any procedural or evidence issues. A note of issue or letter should be sent to the opposing party that a case is ready for trial so a trial date can be set.

**Rule 11 Parties.** An action shall name the real party in interest but other person authorized by law may do so. The capacity of an individual or corporation to sue or be sued shall be determined by tribal and state law. Minors or incompetent persons must be represented by a guardian or other representative. On joinder, class actions and intervention state law will be used as a guide.

**Rule 12 Default.** If a party fails to answer or otherwise enter an appearance and defend, judgment will be entered upon a motion for default. A motion for default must be sent to the last known address of a party, or to his attorney. A hearing on damages can be held when the damages requested are not for a sum certain.

**Rule 13 Discovery.** Discovery may be conducted by available means, and such discovery requests need not be filed with the court except in support of a motion. Discovery and the refusal to make discovery will be governed by state law.

**Rule 14 Jury Trial.** A jury trial is available when a claim exceeds five thousand (\$5,000). Unless otherwise provided by law, all other actions shall be tried to the court. A party must request a jury trial within ten (10) days after the last pleading (complaint or answer) is filed, or it is waived.

**Rule 15 Judgment.** An order intended as a final order is a judgment, even if not formally labeled as a judgment. A party will have twenty (20) days to file a motion for reconsideration, with a supporting brief. The time for appeal will not begin to run until the motion for reconsideration is denied. When a money judgment is awarded a formal judgment should be made. After a final order or judgment is entered the clerk shall mail a copy to the last known address of a party, or mail it to the attorney of record. An attorney or party mail also mail a copy of the final order or judgment to the opposing party.

**Rule 16 Enforcement of Judgment.** A writ of execution to enforce a money judgment will issue, provided a debtor examination hearing may be held first. The writ shall direct the police or other person to seize the property and conduct a judicial sale if necessary. A stay can be granted provided a bond is posted in an amount that will cover the damages and all costs, unless waived. Disputed funds can be ordered held in escrow until resolution of a case or tax dispute.



In addition, for cause shown the court can order a debtor to execute a wage assignment. Garnishment is another option that can be pursued by the creditor. However, a debtor is entitled to exemptions and can keep certain property and personal goods that cannot be seized or ordered sold. Any exemptions will be determined by personal needs, and other laws that apply.

**Rule 17 Injunctions.** A motion for a temporary restraining order or preliminary injunction must be supported by affidavit and state the reasons why harm, loss or irreparable injury will occur. An order can issue upon such a showing to preserve the status quo before a hearing can be held. A hearing on a preliminary injunction will be advanced on the calendar and may be combined with the trial on the merits.

In divorce cases a restraining order can issue upon request when the complaint is filed. In personal or family feud type cases, the court can issue a restraining order to preserve the peace upon a showing of a threat of harm, harassment, retaliation and the like. The request for a restraining order must be supported by statements or other evidence. A hearing will promptly be set.

**Rule 18 Writs.** The court will consider and issue actions or writs such as mandamus, prohibition, habeas corpus, quo warranto, and action to exclude a person from the reservation. The action must be commenced by a complaint or petition and state the basis for relief. If emergency relief is sought a separate motion should be so labeled and filed.

In a habeas corpus action for relief under 25 USC Section 1303, Indian Civil Rights Act, tribal court remedies must first be exhausted. The habeas complaint must list any prior proceedings with outcome, orders if available and the district court will decide the matter and set a hearing as appropriate.

**Rule 19 Appeals.** Appeals from a final order or judgment or other appealable order must be made to the appellate court. See the appellate court rules.

**Rule 20 Fees and Costs.** If the court determines a claim or defense is frivolous, or is pursued in bad faith, the court can award reasonable attorney's fee against a party or attorney, or both. Costs can be awarded to the prevailing party.

**Rule 21 Reserved.**

## **Chapter 2 Repossession**

### **Section 1 Personal Property**

**I.1 Scope.** In rural areas repossession without notice creates hardships and a court order is required. The procedures allow for pre-trial repossession for good cause shown, and penalties for non-compliance.

**1.2 Procedure.** Repossession can be granted when:

- a) a defendant fails to appear and defend within thirty (30) days of service of a complaint for repossession of property (default order); or
- b) a defendant consents to the personal property being taken; or
- c) a party alleges there is a danger of irreparable harm to the property, or the property may be taken out of the area, or like situations. The court will set a hearing on the case. The court may require a bond as a condition of granting a pre-trial repossession order.

**1.3 Consent.** Written consent to repossess property from within the reservation can be secured by the creditor. Such consent shall be filed with the court if an order is sought, or the personal property can be turned over to the creditor by the debtor voluntarily. Otherwise, a court order for seizure of personal property is required by a creditor.

**1.4 Penalties.** A person found to be in violation the repossession procedures may be excluded from the reservation under Article VI, Section 3 of the Tribal Constitution. Any business found by the court to be in willful violation of the law may be denied the privilege of doing business on the reservation, and assessed damages.

**1.5 Civil Liability.** A person and any business whose employee violates the law shall be deemed to have breached the peace of the lands within the reservation, and shall be civilly liable to the purchaser of the personal property for any and all losses actually incurred as a result of the failure to comply with subsection (c).

If the personal property taken unlawfully is consumer goods (primarily for personal, family or household use) the purchaser shall have the right to recover an amount not less than the credit service charge plus ten (10%) percent of the principal amount of the debt, or the time price plus ten (10%) percent of the cash price. Punitive damages may also be awarded.

## **Chapter 3 Small Claims Court**

### **Section 1 Procedure**

**1.1 Scope.** The Small Claims Division is to provide a simple and inexpensive forum for claims of debt of \$2,000 or less, exclusive of costs. A plaintiff may reduce a larger claim and waive the balance but may not divide the claim. A person who elects to use the small claims court waives the option to file in regular civil court. The cases will be decided by a magistrate or judge.

**1.2 Types of Claims.** Only open account, regular credit account, utility rent or other consumer debt actions will be allowed. No vehicle or other repossessions of personal property by business creditors will be heard; no forfeiture or eviction actions will be heard. However, repossession actions by private parties for property of \$2,000 or less will be heard.

**1.3 No Attorneys.** Each party will represent themselves pro se. A business or corporation may appear in small claims court only by a person not an attorney. A party who wants to utilize an attorney can file suit in regular civil court.

**1.4 Complaint.** The plaintiff shall complete a required form, which shall state on its face that a defendant has twenty (20) days to answer. The complaint must state the basis and include any exhibits such as receipts or ledgers. The clerk shall have the plaintiff complete an information or docket sheet with complete addresses.

**1.5 Filing Fee and Service.** The filing fee shall be ten (\$10) dollars, which will not be waived. If the party is requesting the court process server serve the claim, a service fee shall be paid first. Service can be done by certified mail, personal service, admission of service by a defendant, or by publication. Proof of service must be filed with the clerk. It is the party's duty to see that service is done. Cases filed but not served within six (6) months will be dismissed without prejudice.

**1.6 Answer.** A party has twenty (20) days to file an answer which shall be in writing and set out any defenses. It may include any set-off or counterclaim. The defendant shall mail a copy of the answer to the opposing party and file the original with the court. A party may voluntarily enter into a time payment agreement and file it with the clerk.

**1.7 Default.** If a party fails to answer or otherwise defend, the court shall grant a default judgment against a party, and can award costs (filing fee, service costs).

**1.8 Subpoena.** The court may issue subpoenas to require witnesses to appear. The costs of service of the subpoenas shall be paid by the party requesting it, or a party can hire someone to serve it. The clerk has no duty to make service for a party.

**1.9 Witnesses and Evidence.** Witnesses shall be sworn and the court shall conduct the hearing in such order and form as it deems just. No discovery shall be taken by the parties except by leave of court.

**1.10 Orders.** After default or hearing, a written order of judgment shall be made and given or mailed to the parties. Costs are allowed to a winning party. If a suit or defense is determined to be frivolous or made in bad faith the court may award extra costs to a party. The parties shall notify the parties when a judgment is satisfied or paid. No punitive damages will be awarded.

**1.11 Judgment, execution.** The clerk shall mail or give a copy of the order to the parties in court. The court may order the funds paid all at once, or in time payments. The court may issue execution or other process to enforce the judgment. The court may order a party to execute a wage assignment. In any contempt hearing on an order to show cause, a person shall not be jailed or held in contempt if they are indigent or poor. The court may vacate a judgment for up to six months for good cause shown.

**1.12 Appeal.** Within the (10) days of notice of a order or judgment, a party may file a discretionary appeal to the district court. The district court will review the order and decide if it has merit or not. If the appeal has merit the court will conduct any necessary proceedings and issue a written order. There shall be no appeal from the decision of the district court.

**1.13 Removal to District Court.** A party may request removal to the district court within thirty (30) days after service on the defendant. The motion for removal will be filed in the small claims case. The motion must contain a statement that the issue is complex or other important reason. The district court judge shall issue a written order granting or denying the request.

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**Chapter 3 Sentences.** Notwithstanding any prior sentencing provision, the judge has discretion to sentence a person considering all relevant factors. The judge has discretion to allow work release from home in appropriate cases in lieu of a mandatory jail sentence; and to suspend jail sentences in appropriate cases. This interim law will remain in effect until further revision is necessary. This amends prior law as explained below.

(1) Lack of jail. The lack of adequate jail facilities means prisoners are lodged elsewhere. The New Town, ND jail can hold only 5-6 persons on a regular basis according to the BIA police, and persons are taken to Stanley or Williston, ND.

(2) No work release. Those persons eligible for work release cannot get work release since travel and supervision from off the reservation is not realistic. When work release has been granted from the New Town jail, the police say space is needed for newly arrested persons. In effect, no work release for deserving persons is available.

(3) Mandatory sentences. The sentencing laws do not allow the judge any discretion, especially for minor traffic offenses. For example, young mothers with small children face mandatory sentences of ten (10) days for DUS. This causes child care problems, a burden of social services programs and elderly family members who have to step in.

(4) Other hardships. A person jailed with no work release available loses his or her job, is unable to care for their families, and unable to pay fines.

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Upon passage, insert in new Title: Title III Criminal Actions, Chapter 3 Sentences

Resolution No. 97-54-DSB

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### Chapter 6 Rules of Criminal Procedure

**Rule 23** Time for jury request. A person charged with a crime that has a possible jail sentence must request a jury trial at the arraignment or within ten (10) days from the date of arraignment in writing. If the court determines that no lengthy jail sentence will be imposed then no jury trial shall be required. Juries shall be six (6) residents of the reservation.

Trial without jury. In a trial to the court a general finding of guilty or not guilty shall be made.

**Rule 24 Trial Jury - repealed.** (See Title I, Chapter 2, Jury Selection)

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Upon passage insert in new Title: Title III, Chapter 1 Rules of Criminal Procedure

Resolution No. 97-54-DSB

THREE AFFILIATED TRIBES • FORT BERTHOLD RESERVATION

Mandan, Hidatsa, and Arikara Tribes

LEGAL DEPARTMENT

Tribal Administration Buildings  
P.O. Box 220  
New Town, North Dakota 58763  
(701) 627-3621



*Table of C*

DATE: February 3, 1997

TO:

NAME: Judge Gillette

DEPT.: Tribal Courthouse

FAX NO: 627-4602

CITY & STATE: New Town, ND

TELEPHONE: (701) 627-4803

FROM:

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NUMBER OF PAGES INCLUDING THIS ONE: 4

ADDITIONAL INFORMATION: \_\_\_\_\_

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*C.R. Form  
- approved by Judge (1976)  
M. Ch. 6 Form*

OLD

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BE IT FURTHER RESOLVED that:

4: the revised Table of Contents and Titles attached will be the format used, unless amended in future code revision; and

5: any future tribal code amendments must contain a reference to the Titles and Chapters as applicable, and will be inserted in the appropriate Title and Chapter.

CERTIFICATION

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribe of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of 7 members of whom 5 constitute a quorum, 7 were present at a Regular meeting thereof duly called, noticed, and convened, and held on the 13<sup>th</sup> day of February, 1997; that the foregoing Resolution was duly adopted at such meeting by the affirmative vote of 5 members, 2 opposed, 0 abstained, 0 members not voting, and that said Resolution has not been rescinded or amended in any way.

Dated this 13<sup>th</sup> day of February, 1997.

Daylon Spotted Bear  
Secretary,

Attest:

  
\_\_\_\_\_  
Chairman, Tribal Business Council